I. Introduction

In March 1982, the United States Department of Justice awarded a $10 million, three-year contract to INSLAW, Inc., to install the public domain version of a case management software program in 20 large U.S. Attorneys' offices around the country and a modified word processing version of the same software in 74 other offices. The software, developed by INSLAW with public funding from the Law Enforcement Assistance Administration, is known as the Prosecutor's Management Information System or PROMIS.

The relationship between the Department and INSLAW quickly deteriorated into a series of disputes that have continued for over 12 years. The most important early dispute centered on the question whether INSLAW had any proprietary rights in an allegedly enhanced version of the software that INSLAW used to perform its obligations under the contract, and, if so, whether the Department was obligated to compensate INSLAW for use of the enhanced software in an amount greater than that called for in the contract.

In the intervening years, the allegations of misconduct on the part of Justice Department officials made by INSLAW have grown considerably. INSLAW and its principals have accused Department officials of everything from conspiring to destroy INSLAW and steal the PROMIS software to being actively involved in the murder of a free-lance journalist. They have also alleged that a version of PROMIS modified on a California Indian

reservation with a "trap door" that allows eavesdropping by U.S. and Israeli intelligence agencies has become a major tool in the arsenals of those organizations. In the process of making these allegations, they and others have linked incidents involving the Justice Department's relationship to INSLAW with, among other things, the alleged conspiracy carried out by the Reagan campaign in 1980 to delay the release of American hostages held in Iran until after the 1980 election, the Iran-Contra affair and the late British publisher Robert Maxwell.

The dispute has spawned a lengthy bankruptcy proceeding that was eventually dismissed for lack of jurisdiction, several related suits including one seeking the appointment of an independent counsel, two congressional investigations and a series of internal Department reviews and inquiries. On November 7, 1991, then Attorney General William Barr appointed Judge Nicholas J. Bua to serve as a special counsel to investigate all allegations of wrongdoing related to the INSLAW affair. In March 1993, Judge Bua and his staff submitted their report to newly appointed Attorney General Janet Reno. Judge Bua's report concluded that there was no credible evidence of any criminal wrongdoing on the part of any past or present Department employee.

After providing INSLAW with an opportunity to comment on Judge Bua's findings, Attorney General Reno asked the Associate Attorney General and his staff to review Judge Bua's report and INSLAW's analysis of that report and to perform whatever

additional investigation we deemed appropriate in order to advise her on how to proceed on this matter. This report summarizes the analysis and investigation undertaken pursuant to the Attorney General's mandate and contains our recommendations.

II. Scope of Review

It should be noted at the outset that this report does not purport to reflect a completely new and separate investigation of all of the allegations relating to the INSLAW matter. Rather, this report primarily reflects our independent conclusions reached after a detailed review of the investigation and report of the Special Counsel as well as the documentation and testimony accumulated in several other investigations. Accordingly, this report should be read in conjunction with the Special Counsel's report, a copy of which is attached as Addendum A to this report.[1]

We have, however, conducted our own interviews and performed our own investigation relating to a few select allegations where we believed INSLAW raised legitimate questions in its rebuttal to the Special Counsel's report or where we believed additional

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[1] Because we intend this report to constitute a review of the Special Counsel's report and to be read in conjunction with that report, we have not repeated all of the allegations made by INSLAW that were addressed in the Special Counsel's report or all of the investigatory findings of the Special Counsel. Nor have we restated the facts concerning the relationship between INSLAW and the Department of Justice. It is our intention that the Special Counsel's report be considered the primary document and our analysis constitute a supplement to it.

efforts were warranted. In addition, INSLAW's allegations are constantly expanding and evolving. To the extent INSLAW raised new allegations following the completion of the Special Counsel's report that warranted additional investigation, we attempted to perform an appropriate review.

Our review and analysis included the following steps:

Review of the Special Counsel's Investigation: We carefully studied the Special Counsel's report, the July 12, 1993 Analysis and Rebuttal of the Bua Report submitted by INSLAW ("INSLAW Rebuttal") and the February 14, 1994 Addendum to the Analysis and Rebuttal of the Bua Report also submitted by INSLAW ("INSLAW Addendum"). In addition, we reviewed the papers, documents and testimony compiled by the Special Counsel and his staff during their sixteen-month investigation and spoke with several of the investigators about the investigation and their conclusions. The primary purpose of this review was to ensure that the results of that investigation fully supported the conclusions reached by the Special Counsel and were not reasonably susceptible to different interpretations.

INSLAW and its counsel have been extremely critical of the Special Counsel's report. Although those criticisms are contained in great detail in the INSLAW Rebuttal and INSLAW Addendum submitted to the Department of Justice, we held several meetings with INSLAW's principals, William and Nancy Hamilton, and its counsel to be sure that they had an opportunity to present fully the evidence that they maintain supports their

allegations. In addition to a general meeting, we also met with the Hamiltons and their counsel on one occasion to discuss their monetary claims against the government and on another occasion to allow them to present evidence related to the death of J. Daniel Casolaro, a free-lance journalist who police have concluded committed suicide but INSLAW maintains was murdered. These meetings lasted several hours.

Review of Other Investigations: We also carefully reviewed the reports prepared by other entities both within and outside of the Department of Justice on INSLAW's allegations, and we have read the various judicial opinions that have been issued. Although we analyzed all the available reports and published opinions, we concentrated our efforts on the two that were most critical of the Department of Justice: the September 10, 1992 report of the House Committee on the Judiciary, "The INSLAW Affair," and the January 25, 1988 opinion of Bankruptcy Judge George F. Bason, Jr. in In re INSLAW, Inc., 83 B.R. 89 (D.D.C. 1988).

We are grateful to Chairman Jack Brooks and his staff for their cooperation during our review of the House Committee on the Judiciary report ("House Report"). The Committee made all of the documents, notes and testimony compiled by the Committee investigators available to us. We carefully analyzed those documents that were the most relevant to our review.[2]

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[2] We did not seek access to the records relating to the September 1989 report of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the

We also carefully read and analyzed Judge Bason's opinion. While we did not review all the transcripts of the bankruptcy proceedings nor all of the exhibits introduced, we did spend a considerable amount of time reviewing documents and testimony presented during those hearings.

Anonymous Sources: Many of the allegations made by INSLAW have been based on statements that anonymous sources have allegedly made to Mr. Hamilton. According to INSLAW and Mr. Hamilton, these individuals -- many of whom are allegedly senior officials at the Justice Department and other government agencies -- are fearful that if they come forward they will fall victim to reprisals. Because of the change in Administrations and the new leadership at the Justice Department, we were hopeful that these alleged sources would feel comfortable speaking directly with us. As discussed below, we made considerable efforts to provide reasonable safeguards that would have protected any alleged sources were they to have come forward. Unfortunately, only one such source (and this source "belonged" to a Senate investigator and not to Mr. Hamilton) agreed to speak with us.

Investigation of the Death of J. Daniel Casolaro: INSLAW was also extremely critical of the Special Counsel's review of the investigation undertaken by local West Virginia authorities

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United States Senate ("Senate Staff Report") for two reasons. First, the Senate Staff Report concluded that there was no evidence of a conspiracy involving Department of Justice officials and, thus, is largely consistent with the Special Counsel's Report. Second, the Special Counsel was provided access to those records during his investigation but was not provided access to the House records.

following the death of Joseph Daniel Casolaro. Mr. Casolaro was a free-lance writer who had been investigating claims made by INSLAW at the time of his death in 1991. Although local police twice concluded that the cause of Mr. Casolaro's death was suicide, INSLAW and others have asserted that he was murdered in order to keep him from revealing information he had uncovered involving the government's wrongdoing in connection with INSLAW. We committed substantial resources to investigating the circumstances surrounding Mr. Casolaro's death. The breadth of that investigation and the conclusions reached are provided in detail in Section V below.

Other Investigation: In addition, we investigated several of the allegations made and leads provided by INSLAW that were not included in the other investigations. Those efforts focused on, among other things, INSLAW's allegations concerning the distribution of PROMIS to other government agencies and INSLAW's allegation that software currently in use by the Federal Bureau of Investigation is actually INSLAW's PROMIS. Those and other efforts are described in detail in the relevant sections of this report.

III. Summary of Conclusions and Recommendations

Following our review and analysis, we reached the following conclusions and recommendations:

(1) We recommend that the Attorney General adopt the

Special Counsel's report in its entirety. More specifically, we recommend that the Attorney General adopt the following conclusions reached by the Special Counsel, all of which are fully supported by the available evidence:

> There is no credible evidence to support the allegation that members of DOJ conspired with Earl Brian to obtain or distribute PROMIS software. The overwhelming weight of the evidence is that there was absolutely no connection between Earl Brian and anything related to Inslaw or PROMIS software.
>
> There is woefully insufficient evidence to support the allegation that DOJ obtained an enhanced version of PROMIS through "fraud, trickery, and deceit," or that DOJ wrongfully distributed PROMIS within or outside of DOJ. To the contrary, we are convinced that DOJ employees undertook actions with respect to Inslaw that they genuinely believed were in the best legitimate interests of the government.
>
> We also find that DOJ conducted itself properly after it became involved in litigation with Inslaw.
>
> We find that there is no credible evidence that DOJ employees sought to improperly influence the selection process that resulted in the decision not to reappoint Bankruptcy Judge Bason.
>
> We find that there is insufficient evidence to support the allegations that DOJ employees attempted to improperly influence the U.S. Trustee to convert the Inslaw bankruptcy case, or that DOJ employees committed perjury in order to hide this obstruction.
>
> Finally, we find that there is no evidence to support the allegation that DOJ employees destroyed any documents related to Inslaw or otherwise acted improperly in order to obstruct Congressional investigations into Inslaw's allegations.

(Bua Report 13-14.)

(2) We also find that there is no credible evidence that employees of the Department of Justice conspired with anyone to steal PROMIS or to injure INSLAW in any other way.

(3) There is no credible evidence that the Office of Special Investigations in the Justice Department's Criminal Division is engaged in covert intelligence activities or that it has participated in the illegal trafficking of PROMIS software or in the death of J. Daniel Casolaro. Rather, the Office of Special Investigations appears to be wholly committed to its mission of locating World War II war criminals and other related matters.

(4) The conclusion reached by Martinsburg, West Virginia authorities that the death of J. Daniel Casolaro was a suicide is fully supported by the facts surrounding his death. There is no credible evidence that Mr. Casolaro was murdered. Furthermore, there is no credible evidence linking any Justice Department official or any individual other than Mr. Casolaro himself to his death.

(5) We find there is no basis for the appointment of an independent prosecutor to further investigate these allegations. Accordingly, we recommend that the Attorney General not appoint any such counsel in the event that Independent Counsel legislation presently before Congress is passed into law.

(6) We find, after reviewing all the issues raised by INSLAW, that the circumstances surrounding these allegations do not warrant the waiver by the United States of statutory time bars to INSLAW's various monetary claims against the government and recommend that the Attorney General not accede to INSLAW's requests for monetary compensation. INSLAW was provided a full

and fair opportunity to litigate its claims against the government before the appropriate administrative and judicial tribunals. There is no credible evidence that individuals associated with the Department of Justice or any other government agency did anything to frustrate those efforts. Furthermore, we find that the positions taken by the Department on the issues in dispute were fully supported by the facts of the case. The ability of INSLAW and its counsel to keep this matter in the public spotlight by making a series of unsubstantiated allegations linking this affair to some of the major alleged conspiracies of the last 15 years should not be rewarded by acquiescing to their monetary demands.

(7) Finally, we recommend that the Attorney General take those steps necessary to bring this entire affair to closure from the Department's perspective. INSLAW's allegations have resulted in two congressional investigations, several internal Department of Justice inquiries, the appointment of a Special Counsel and numerous law suits. The Special Counsel concluded, and we concur, that virtually all of these allegations were based on nothing more than uncorroborated conjecture, on hearsay information from anonymous sources or on information received from patently unreliable sources. In the process, the reputation and integrity of several Justice Department employees have been unfairly impugned. We cannot measure the toll those attacks have taken. However, we believe that a statement from the Attorney General that she considers the matter closed (absent the

discovery of compelling and verifiable evidence contrary to the conclusions contained in this report) would at least begin the process of remedying the effects of INSLAW's groundless allegations.

IV. The Allegations Of A Conspiracy By Department Of Justice Officials To Steal PROMIS And Distribute It Within The United States Government And Internationally.

INSLAW has made numerous allegations concerning conspiracies among high-level DOJ officials to steal INSLAW's Enhanced PROMIS. Although it is difficult to summarize those charges, they revolve around several basic theories. INSLAW's counsel described those various theories as constituting concentric circles with the outer circles encompassing the broadest and most far-reaching conspiracies. As a review of those theories will indicate, the conspiracy allegations have evolved over time, overlap with each other in some significant respects, and, on occasion, contradict one another. The primary focus of the Special Counsel's investigation was on these conspiracy accusations.

The most basic conspiracy theory focuses on the relationship between Madison Brewer, the Department of Justice official with primary responsibility to oversee the implementation of the PROMIS contract, and INSLAW. According to this theory, Mr. Brewer was consumed by hatred for both INSLAW and Mr. Hamilton as the result of his dismissal as general counsel of INSLAW's non-profit predecessor in the late 1970s. As a result, Mr. Brewer, in his role as the administrator of INSLAW's largest and most

important contract, set out to destroy the company. Peter Videnieks, the Department's contracting officer for the PROMIS contract, was allegedly an important accomplice in that effort.

An important element of this theory is the role played by Judge D. Lowell Jensen. According to INSLAW, Judge Jensen was the central figure in an effort "to force INSLAW out of business so that DOJ's PROMIS-based business could be awarded to political friends and supporters of the then-current administration." (INSLAW Rebuttal 67-71.) From 1981 to 1986, when he was appointed to the District Court for the Northern District of California, Judge Jensen served successively as Assistant Attorney General for the Criminal Division, Associate Attorney General and Deputy Attorney General. According to INSLAW, Judge Jensen was driven by the fact that he believed the Department of Justice made a mistake in installing PROMIS as its case management software rather than a competing software product that had been developed under Judge Jensen's supervision when he served as District Attorney of Alameda County, California in the 1970s.

INSLAW maintains that Judge Jensen "engineered" a series of sham contract disputes with INSLAW to drive it out of business. Furthermore, Judge Jensen allegedly furthered this conspiracy by ignoring INSLAW's complaints about the conduct of Mr. Brewer in the implementation of the PROMIS Contract and by failing to refer certain allegations to the Office of Professional Responsibility.

Another conspiracy theory advocated by INSLAW focuses on Dr.

Earl Brian. According to this theory, high level DOJ officials conspired with Dr. Brian, a businessman and formerly California's Secretary of Health and Welfare under Governor Ronald Reagan in the early 1970s, to steal PROMIS and destroy INSLAW. According to INSLAW, the goal of this alleged conspiracy was to force INSLAW into bankruptcy so that Hadron, Inc., a company connected with Dr. Brian, could buy INSLAW's assets, including its rights to PROMIS. Subsequently, the Justice Department would award Hadron a "massive sweetheart contract."

The evidence that INSLAW maintains proves the existence of this conspiracy focuses on efforts allegedly made by Hadron and related entities to purchase INSLAW's assets. INSLAW asserts that key Hadron officials travelled to New York in September 1983 to raise $7 million for the acquisition of INSLAW's PROMIS. When those efforts failed, INSLAW claims that Dr. Brian and the Department of Justice adopted another vehicle to provide Dr. Brian with the sweetheart deal from his friends in the Reagan Administration. In order to ensure that INSLAW would not be in a position to disrupt that deal, INSLAW maintains that Systems and Computer Technology, Inc., at the encouragement of the Department, attempted to purchase INSLAW. Those efforts were also unsuccessful.

A closely related but distinct series of allegations center around the "October Surprise" conspiracy. This conspiracy theory is largely the same as the Brian conspiracy described above. However, this theory contains two important additional

allegations. First, it maintains that Dr. Brian was involved in various covert operations and that "he had a central role in bringing about a delay until after the 1980 Presidential election in the release of the American hostages held by Iran." ("The INSLAW Case: Crimes, Criminals, and Grounds for Prosecution," Memorandum to Judge Bua from INSLAW, January 14, 1992 ["INSLAW Crimes"] 42-43.) The alleged conspiracy undertaken by the Reagan campaign to delay the release of the American hostages has been commonly referred to in the media as the "October Surprise." Second, this theory asserts that Department officials participated with Dr. Brian and Hadron in a conspiracy to steal PROMIS in order to reward Dr. Brian for his key role in the successful October Surprise conspiracy.

The next series of conspiracy theories advocated by INSLAW center on the roles allegedly played by various U.S. and foreign intelligence agencies. The first alleges that the primary motivation behind the alleged theft of PROMIS was "to use it as a means of penetrating the intelligence and law enforcement agencies of other governments." (INSLAW Crimes 33.) According to a summary of crimes allegedly committed in relation to these matters submitted to the Special Counsel by INSLAW, the scheme worked as follows:

> The first step in this scheme was the sale to the foreign government of a computer into which had been inserted a microchip capable of transmitting to a U.S. surveillance system the electronic signals emitted by the computer when in use. Where such a sale would have violated U.S. export administration regulations, U.S. intelligence personnel would connive with the U.S. Customs Service to slip the computer past the normal controls. To facilitate the

> National Security Agency's ability to "read" the signals transmitted by the microchip, the software used in the computer had to be a product with which the U.S. was already familiar. As explained in part I(A)(1) above, Enhanced PROMIS has capabilities that make it ideally suited to tracking the activities of a spy network. It was necessary, therefore, to induce the foreign purchaser of a doctored computer also to purchase PROMIS.

(INSLAW Crimes 33-34.) According to INSLAW, Dr. Brian was the principal sales agent of PROMIS to foreign governments and agencies.

Also, according to INSLAW, modifications to Enhanced PROMIS were made by Michael Riconosciuto in a trailer on the Cabazon Indian Reservation in Indio, California in the early 1980s. According to INSLAW he modified PROMIS with a "trap door" which allowed electronic eavesdropping by the United States government.

A slightly broader conspiracy theory advocated by INSLAW alleges that the Department of Justice and Israeli intelligence agencies acted as partners in the theft and international distribution of PROMIS. INSLAW also asserts that the late British publisher Robert Maxwell assisted Israeli intelligence agents in the dissemination of PROMIS to the intelligence and law enforcement agencies of other governments and to international commercial banks. According to this theory, Israeli intelligence agents also colluded with Department of Justice officials to prevent INSLAW from fully litigating its claims against the U.S. government. According to INSLAW, an Israeli agent "provided $600,000 from a slush fund, that was jointly controlled by U.S. and Israeli intelligence, in order to get INSLAW's lead counsel fired so that INSLAW could no longer prosecute its PROMIS

proprietary rights and license fee claims against the U.S. Justice Department." (INSLAW Addendum 16.)

Finally, in the Addendum to INSLAW's Analysis and Rebuttal of the Bua Report dated February 14, 1994, INSLAW advanced for the first time its latest conspiracy allegation. According to INSLAW, the Office of Special Investigations ("OSI") in the Criminal Division of the Department of Justice is, in fact, the Department's own covert intelligence agency with functions totally unrelated to OSI's declared mission of locating and deporting Nazi war criminals. INSLAW asserts that OSI participated in illegal trafficking of PROMIS software and in the alleged murder of Mr. Casolaro.

Although the above summary attempts to group INSLAW's many accusations into discrete conspiracy theories in order to make them more readily understandable, INSLAW generally does not make these distinctions. Rather, INSLAW apparently maintains that all of the allegations summarized above constitute one large conspiracy to deprive INSLAW of its rights in the PROMIS software and to profit at INSLAW's expense. Furthermore, INSLAW alleges the conspiracy was carried out by, among other things, (1) the coverup of the involvement of Department officials, including the commission of perjury by several Department employees during and after the bankruptcy proceedings; (2) the interference by Department officials with the reappointment of Bankruptcy Judge George Bason; (3) the illegal distribution of Enhanced PROMIS to other agencies within the U.S. government; (4) the illegal

distribution of Enhanced PROMIS to foreign governments and to international banking organizations; and (5) the murder of journalist J. Daniel Casolaro.

A. Anonymous Sources

INSLAW has based the majority of its allegations on statements allegedly made by individuals with first hand knowledge of relevant events but who insist on anonymity due to fear of government reprisals. In Exhibit B -- "A Synopsis of Specific Claims About U.S. Department of Justice (DOJ) Malfeasance Against INSLAW Made by Credible Individuals Who Are Fearful of Reprisal" -- to INSLAW's Rebuttal, INSLAW describes 11 such individuals and summarizes the information each has allegedly provided to INSLAW. According to INSLAW, these anonymous sources include six current or former Justice Department officials, two officials of unspecified U.S. government agencies, a former World Bank employee, a computer programmer aboard a U.S. nuclear submarine and a trusted friend of the Hamiltons who "has a close relationship with one or more persons currently holding senior level positions in the Central Intelligence Agency." INSLAW has referred to other anonymous sources in other parts of its rebuttal and in other papers submitted to the Department of Justice.

One of the central goals of our review of the Bua Report was to create an atmosphere that would encourage these alleged sources to come forward. We hoped that the change of

administrations and the appointment of Attorney General Janet Reno would be key factors in that effort. Furthermore, the Associate Attorney General asked INSLAW's counsel in a letter dated September 20, 1993 to convey the following extraordinary assurances to the alleged sources:

> First, the review of the entire matter is being conducted by attorneys in my office at my direction. Accordingly, the interviews of the subject witnesses will be conducted by attorneys from my office who have had no prior involvement in the INSLAW matter in any way. In addition, attorneys from the Attorney General's Office and the Deputy Attorney General's Office may participate in some interviews. If it is necessary to include other individuals from the Department in particular interviews, we will do so only after notifying the witness and receiving his or her approval.
>
> Second, the distribution of the information obtained from these interviews will be limited to the Attorney General's Office, the Deputy Attorney General's Office and my office to the extent possible. The distribution of any information beyond these offices will be done on a need-to-know basis only. Any disclosure of information provided by these witnesses that might lead to the identification of any such witness to individuals who have previously been involved in the matter will require my approval or the approval of the Attorney General.
>
> Third, the Attorney General and I provide our personal assurances that we will not tolerate any acts of reprisal by Department employees against individuals cooperating with this investigation.

In addition, an individual was designated within the Associate Attorney General's Office, pursuant to INSLAW's request, to receive information bearing on INSLAW's claims in confidence.

Despite these exceptional efforts, not a single INSLAW source contacted the Associate's office or otherwise indicated a willingness to cooperate with our review. On several occasions, we asked INSLAW and its counsel to communicate the Attorney

General's assurances and to encourage the alleged sources to speak with us. According to Mr. Hamilton, several sources indicated to him that they will not come forward unless an independent counsel is appointed to investigate INSLAW's allegations while others allegedly insisted that the Attorney General make a public statement guaranteeing their protection from reprisals.

B. There Is No Credible Evidence Supporting INSLAW's Allegations Of A Conspiracy Involving Judge D. Lowell Jensen.

INSLAW has made numerous allegations involving a Department of Justice conspiracy spearheaded by United States District Court Judge D. Lowell Jensen to destroy INSLAW and acquire PROMIS. During the period in which Judge Jensen allegedly "engineered" this conspiracy, he served successively at the Department as Assistant Attorney General for the Criminal Division, Associate Attorney General and Deputy Attorney General. According to INSLAW, Judge Jensen engineered a series of sham contract disputes with INSLAW and ignored INSLAW's complaints about its allegedly unfair treatment at the hands of the Department. Judge Jensen was allegedly driven by the fact that he believed a case management software program developed by the Alameda County (California) District Attorney's Office while he was District Attorney was superior to the PROMIS program.

INSLAW points principally to the following facts as "direct" evidence of Judge Jensen's involvement in a conspiracy:

(1) "As District Attorney of Alameda County in California

in the 1970s, Jensen developed case management software which competed unsuccessfully against PROMIS in California. By the time Jensen came to DOJ in early 1981, he believed that DOJ had been wrong to promote the use of PROMIS by district attorneys' offices instead of his own case management software." (Declaration of William Hamilton, December 22, 1989 ["Hamilton 12/22/89 Decl."] 4.)

(2) According to INSLAW, a Department of Justice source told Ronald LeGrand, chief investigator for the Senate Judiciary Committee, that "Jensen engineered INSLAW's problems right from the start." The source also allegedly identified several senior Department officials who allegedly had information concerning Judge Jensen's involvement.

(3) According to Mr. Hamilton, "An informant who does not wish to be named until assured of protection against reprisal told INSLAW with regard to the sham contract disputes that in 1984, Marilyn Jacobs, Jensen's secretary at DOJ, stated to the informant that 'Jensen was the main person behind the INSLAW problem' and that 'his style was to operate using his subordinates.'" (Hamilton 12/22/89 Decl. 11.)

(4) Janis Sposato, Deputy Assistant Attorney General for Administration, allegedly told INSLAW during settlement discussions involving a dispute over computer time-sharing billing in 1985 that, "My management upstairs is unwilling to allow me to make any more concessions." According to INSLAW, "At the time, Sposato reported directly to the Assistant Attorney

General for Administration, whose offices were on the same floor as Sposato's. That individual, however, reported, in turn, directly to Deputy Attorney General Lowell Jensen, whose offices were several floors upstairs. INSLAW inferred then and infers now that Sposato was alluding to Deputy Attorney General Lowell Jensen's unwillingness to permit a resolution on the merits of the Fiscal Year 1983 computer time-sharing issue because it was DOJ's main 'fig leaf' for its wrongful withholding of payments under the contract." (INSLAW Rebuttal 69.)

(5) According to INSLAW, William Tyson, then Director of the Executive Office of United States Attorneys, told Mr. Hamilton during a meeting on May 2, 1983, "Brick Brewer is not your only problem. There is a Presidential appointee in the current Administration who is so antagonistic to PROMIS and INSLAW that I have to maneuver to keep him away from the meetings of the U.S. Attorneys for fear that he will so poison the well that the project will have no chance of success." (INSLAW Crimes 10-11, n 7.) According to INSLAW, the presidential appointee referred to by Mr. Tyson must have been Judge Jensen.[3]

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[3] Mr. Tyson denies making such a statement to Mr. Hamilton. Nevertheless, Bankruptcy Judge Bason and INSLAW both argue that a March 29, 1987 letter sent by Mr. Tyson to Judge Jensen vowing to continue denying under oath that he had made such a statement constitutes evidence that Mr. Tyson actually made the statement and that Judge Jensen was the appointee to whom he referred. The text of the letter, which was apparently sent on the same day as an article quoting from Mr. Hamilton's affidavit about Mr. Tyson's alleged comments appeared in the Washington Post, states:

> I did not make the comments which Mr. Hamilton says I made. They are sheer invention on his part. I want you to know this because it appears that he is trying to show that these

After considering and investigating INSLAW's allegations of Judge Jensen's involvement in a conspiracy with Dr. Brian and others, the Special Counsel concluded that there was no credible evidence of such a conspiracy. (A discussion of the evidence involving Dr. Brian's involvement in the alleged conspiracy is discussed in Section IV(C) below.)

INSLAW is particularly critical of the Special Counsel's investigation due to his failure, according to INSLAW, to thoroughly investigate the specific allegations allegedly made by Mr. LeGrand's confidential source. INSLAW also criticizes the Special Counsel for simply interviewing the Department of Justice officials identified by the source rather than calling them before the grand jury. (INSLAW Rebuttal 44-46.)

Because of the extreme importance placed by INSLAW on the statements allegedly made by Mr. LeGrand's source, we spent considerable effort working with the staff of the Senate Judiciary Committee and Mr. LeGrand to arrange an interview of the source. Those efforts were ultimately successful. The

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statements, which I did not make, referred to you.

> My entire meeting with Mr. Hamilton consisted of listening to his litany of complaints concerning the handling of the INSLAW contract, especially in regard to Mr. Brewer, followed by my promise to look into his complaints. I have denied under oath in a deposition this week having made the comments he claims I made and I will continue to make such denials in any future proceedings.

Far from evidence of some sort of complicity between Mr. Tyson and Judge Jensen, we believe the letter reflects Mr. Tyson's sincere concern that Judge Jensen understand that he never made any such statements.

allegations attributed to that source and the results of our interview with him are described in detail below.

Based upon the results of that and other interviews described below and the records of the Special Counsel and House investigations, we conclude that there is no credible evidence of a conspiracy involving Judge Jensen or other senior Department of Justice officials.[4]

1. Ronald LeGrand's Confidential Source

Of all the individuals who have allegedly provided information to INSLAW and to others on a confidential basis suggesting a conspiracy against INSLAW by the United States government, the only one to come forward and agree to be interviewed during our review of the Special Counsel's report was Ronald LeGrand's confidential source. Mr. LeGrand, the former chief investigator for the Senate Judiciary Committee, had

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[4] Our conclusion and the conclusion of the Special Counsel is consistent with the findings of the Senate Staff study that it "found no proof that Attorney General Edwin Meese, Deputy Attorney General D. Lowell Jensen or other Justice Department officials were involved in a conspiracy to ruin INSLAW, or to steal INSLAW's product for their own benefit." (Senate Staff Report 22.) Although the Senate staff did indicate that some incidents raise the specter that Judge Jensen may have been biased against PROMIS and in favor of the Alameda County program, the report concluded:

> Although such bias, to the extent it existed, may have led Jensen, as the Bankruptcy Court found, to be indifferent to INSLAW's complaints about other Department officials, it does not, absent further evidence, translate into participation in a broad conspiracy to cripple INSLAW for the benefit of Jensen or other Department of Justice officials. The Staff found no such further evidence...

(Senate Staff Report 27.) We too failed to find any such evidence of Judge Jensen's involvement in a conspiracy.

several conversations in 1988 with an individual who requested anonymity regarding the allegations raised by INSLAW. After Mr. LeGrand shared some of the details of those conversations with Mr. Hamilton, a major controversy developed as to what information the individual ("LeGrand's Source") actually conveyed to Mr. LeGrand. (See Bua Report 113-120, INSLAW Rebuttal 44-46, House Report 61-63.) Despite repeated efforts by the Special Counsel and investigators from the House Judiciary Committee, LeGrand's Source refused to be interviewed. He did, however, agree to be interviewed by us as part of our review.[5]

In an affidavit dated December 22, 1989, Mr. Hamilton swore to the following:

> 5. In late April 1988, Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, telephoned me to request a full briefing on the disputes between INSLAW and DOJ. My wife and I subsequently briefed LeGrand at INSLAW on the morning of May 11. LeGrand telephoned me two days later with information that he said a trusted source has asked him to convey. LeGrand described the source as a senior career official in DOJ "with a title" whom LeGrand had known for 15 years and whose veracity LeGrand could attest to without reservation. Shortly after DOJ's public announcement on May 6, 1988 that DOJ would not seek the appointment of an independent counsel in the INSLAW matter and that it had cleared Meese of any wrongdoing, the source told LeGrand that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth." The source also said that the "Justice Department has been compromised on the INSLAW case at every level." On several occasions since then, LeGrand has confirmed what he told me, and on October 11, 1988,

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[5] We are grateful to the Senate Judiciary Committee, Chairman Joseph Biden, the Senate Legal Counsel, Mr. LeGrand and, of course, LeGrand's Source for cooperating with us and allowing us to interview LeGrand's Source. LeGrand's Source stated that he was willing to cooperate with us despite his unwillingness to cooperate with past investigations because of his respect for and confidence in Attorney General Reno.

> Elliot Richardson, counsel to INSLAW, sent Robin Ross, an assistant to Attorney General Dick Thornburgh, a memorandum summarizing the statements attributed by LeGrand to his source. In addition, the source made the following statements:
>
> a. Jensen engineered INSLAW's problems right from the start and relied for this purpose principally upon three senior DOJ officials: Miles Matthews, Executive Officer of the Criminal Division; James Knapp, a non-career Deputy Assistant Attorney General in the Criminal Division; and James Johnston, Director of Contract Administration in the Justice Management Division. Miles Matthews stated in the presence of LeGrand's source that "Lowell [Jensen] wants to get INSLAW out of the way and give the business to friends."
>
> b. The source told LeGrand that John Keeney and Mark Richards [sic], each a career Deputy Assistant Attorney General in the Criminal Division, and Philip White, the recently retired Director of International Affairs for the Criminal Division, knew "all about" the Jensen malfeasance in the INSLAW matter. Although Richards [sic] and White were "pretty upset" about it, the source did not believe that either of them would disclose what they knew except in response to a subpoena and under oath. The source added that he did not think either Richards [sic] or White would commit perjury.
>
> c. The source believes that documents relating to Project Eagle were shredded inside DOJ, but that INSLAW should nevertheless subpoena DOJ paperwork prepared by a Jensen subordinate relating to the purchase of large quantities of computer hardware for which the senior DOJ career staff could see no justification.

(Hamilton 12/22/89 Decl. 19-20.)

According to the House Report, "Mr. LeGrand provided little corroboration of the Hamilton's [sic] allegations" during a sworn statement to House investigators. (House Judiciary Report 62.) Furthermore, Mr. LeGrand informed House investigators and the Special Counsel that, as far as he knew, none of the information provided to him by his source was obtained first-hand. However, Mr. LeGrand did confirm to both House investigators and the Special Counsel that he believed that his source did provide to

him some of the information reflected in Mr. Hamilton's affidavit.

On February 7, 1994, we met with LeGrand's Source in a private dining room at a local club. Mr. LeGrand and Morgan Frankel, Assistant Legal Counsel for the United States Senate, were also present. Although LeGrand's Source asked to remain anonymous in any report, he identified himself to us, and we were able to verify that he is a long time career employee of the Department of Justice. He informed us that he has known Mr. LeGrand for approximately 20 years. Mr. LeGrand confirmed that the individual we interviewed was indeed his confidential source.

LeGrand's Source informed us that he has no information indicating that anyone at the Department of Justice was involved in any wrongdoing involving the PROMIS software or INSLAW. He stated that he has no first-hand knowledge of any misconduct by anyone in relation to PROMIS or INSLAW. He further stated that he has not heard any rumors which he would consider credible about any such misconduct.

LeGrand's Source stated that the subject of INSLAW came up during a friendly conversation with Mr. LeGrand in 1987 or 1988. During the conversation, he told Mr. LeGrand that if he were investigating those allegations he would contact Miles Matthews. LeGrand's Source said that he suggested contacting Mr. Matthews because he was aware that the Justice Department had installed PROMIS in various U.S. Attorneys' offices in the early 1980s, because he believed Mr. Matthews was responsible for procurement

matters for the Criminal Division at that time, and because he did not particularly like or trust Mr. Matthews. He stated that he did not have any information -- nor had he heard any rumors -- linking Mr. Matthews to any wrongdoing connected with INSLAW or PROMIS.

He also stated that he never mentioned Lowell Jensen, Mark Richard, Philip White, James Johnston or James Knapp to Mr. LeGrand. He stated that he believed that there was "no way in a million years" that Mr. Keeney would be involved in any wrongdoing. LeGrand's Source also stated that he did not believe any of these other individuals would be involved in any type of cover-up.

Finally, we read the above excerpted portion of Mr. Hamilton's statement to LeGrand's Source. He stated that none of the statements or beliefs attributed to him in the statement are accurate. More specifically, he stated that he never said or believed any of the comments attributed to him, that he never had reason to believe that any of the Department officials identified in the statement were involved in any wrongdoing or had knowledge of any wrongdoing by other DOJ officials, and that he never had reason to believe that any documents related to Project Eagle were improperly shredded.

The investigation undertaken by the Special Counsel is consistent with much of what LeGrand's Source told us. In an interview with the Special Counsel and in an earlier sworn statement to the Office of Professional Responsibility, Judge

Jensen denied any effort on his part to injure or bankrupt INSLAW or to "engineer" any contract disputes with the company. Messrs. Matthews, Knapp, Johnston, White, Keeney and Richard all also denied having any knowledge of wrongdoing by Judge Jensen or of any wrongdoing of the type described in Mr. Hamilton's affidavit. (Bua Report 118-120.)

2. Marilyn Jacobs

We also interviewed Marilyn Jacobs who, according to Mr. Hamilton, told an anonymous informant that Judge Jensen "was the main person behind the INSLAW problem." Ms. Jacobs was Judge Jensen's secretary at the Department of Justice.

Ms. Jacobs stated that she continues to work for Judge Jensen. When Judge Jensen moved to San Francisco in 1986 following his appointment to the U.S. District Court for the Northern District of California, Ms. Jacobs also moved to California to continue to work for him.

Ms. Jacobs stated that the information contained in Mr. Hamilton's affidavit is false. She said that she never told anyone anything about INSLAW while she was at the Department. Furthermore, she said that she never told anyone that "Jensen was the main person behind the INSLAW problem" or anything to that effect. Nor did she ever tell anyone that "his style was to operate using his subordinates" or anything to that effect. She stated that, to her knowledge, Judge Jensen was not involved in any wrongdoing with regard to INSLAW.

We are aware that Ms. Jacobs' credibility must be viewed in

light of her continued employment with Judge Jensen. Nevertheless, in light of the failure of Mr. Hamilton's supposed source to come forward despite assurances by the Attorney General and the lack of any other evidence linking Judge Jensen to any INSLAW-related conspiracy, we find no reason to doubt her denial of Mr. Hamilton's allegations.

3. Janis Sposato

INSLAW inferred from Janis Sposato's alleged statement that "My management upstairs is unwilling to allow me to make any more concessions" that Ms. Sposato was referring to Judge Jensen and that Judge Jensen was therefore conspiring to ruin INSLAW and steal the PROMIS software. The only basis for these inferences appears to be the floor plan of the main Justice Department building. (Ms. Sposato was located on the first floor of the building at that time making nearly all senior management "upstairs" from her location.)

Furthermore, even if Ms. Sposato made such a statement and in fact was referring to Judge Jensen (two propositions which are not supported by the facts), we fail to see what the relevance of such a comment would be. INSLAW and the Department were attempting to negotiate a resolution of some of their claims against each other at the time. We would expect her to work with senior management as the Department's positions in the negotiations were formulated. The fact that Judge Jensen might have some interest in the matter in light of the direct request made by INSLAW's attorneys to Judge Jensen to initiate such

discussions does not seem unusual. Furthermore, we are not surprised that "concessions" to INSLAW during those negotiations eventually ceased.

Nevertheless, we interviewed Ms. Sposato regarding INSLAW's allegations. Ms. Sposato stated that she does not recall ever making the statement INSLAW has attributed to her and that the statement does not sound like something she would say. Furthermore, she stated that she never received any direction on the negotiations directly from Judge Jensen. However, she did occasionally deal with Associate Deputy Attorney General Jay Stephens. She stated that, to the best of her knowledge, every time Mr. Stephens contacted her with regard to INSLAW it was in response to a request from INSLAW. It was her impression that Mr. Hamilton would get frustrated with the process and then ask his attorney, former Attorney General Elliot Richardson, to contact Judge Jensen. Mr. Stephens would inform her when such contacts were made. Ms. Sposato stated that neither Mr. Stephens nor Judge Jensen ever tried to directly influence the negotiations. Rather, it was her impression that they were trying to stay away from the discussions.

C. There Is No Credible Evidence Supporting INSLAW's Allegations Regarding a Department of Justice/Earl Brian Conspiracy.

INSLAW's allegations regarding Dr. Earl Brian's involvement in a conspiracy with the Department of Justice to steal Enhanced PROMIS fall into two categories. First, INSLAW alleges that DOJ officials conspired with Dr. Brian, a member of Ronald Reagan's

gubernatorial cabinet along with former Attorney General Edwin Meese, to destroy INSLAW so that Hadron, Inc., a Brian-affiliated company, could acquire the rights to PROMIS. This conspiracy was allegedly carried out by Hadron and affiliated companies through a series of efforts to acquire either PROMIS or INSLAW. The second category of allegations provides a different rationale for the conspiracy. These allegations maintain that the Justice Department's involvement in the conspiracy was based not simply on a desire to award a lucrative government contract to an old political acquaintance but on a desire to reward Dr. Brian for the critical role he played in the October Surprise conspiracy.

The evidence that INSLAW points to as establishing the existence of a Brian/Justice Department conspiracy consists primarily of the following: the fact that Dr. Brian and former Attorney General Edwin Meese served together as members of Governor Reagan's cabinet in the early 1970s; the testimony of Michael Riconosciuto, Ari Ben-Menashe and Charles Hayes; a series of suppositions involving the activities of various corporate entities; and the alleged statements of certain unnamed sources as conveyed by Mr. Hamilton.

After a thorough review of the Special Counsel's records, the House Judiciary Committee records, INSLAW's submissions and some additional investigation, we concur in the following conclusions of the Special Counsel:

> Our investigation has led us to conclude that Inslaw's allegations of a conspiracy to takeover Inslaw or to "get PROMIS" involving Earl Brian and DOJ simply do not withstand any level of scrutiny. Those individuals claiming to have

> direct knowledge of this conspiracy not only are unworthy of belief, but are contradicted by an abundance of believable and verifiable evidence to the contrary.
>
> Similarly, the claimed "circumstantial evidence" of such a conspiracy, as outlined by William Hamilton and Inslaw's lawyers, falls far short of being proof of anything.

(Bua Report 121.) These conclusions are in full accord with the findings of the Senate Subcommittee that it could find "no proof of any connection between Brian or Hadron and the Department with regard to the INSLAW contract." (Senate Staff Report 30.)

1. Michael Riconosciuto

Michael Riconosciuto is the primary source of information allegedly linking Dr. Brian to a conspiracy to steal PROMIS and destroy INSLAW. He claims, among other things: that he met with Dr. Brian from whom he received a copy of PROMIS; that he personally performed alterations to the software on the Cabazon Indian reservation in Indio, California and elsewhere; that the software was provided to Dr. Brian as payment for his involvement in the October Surprise conspiracy; and that he has personal knowledge of the dissemination of PROMIS to various entities around the world.

After an extensive investigation of Mr. Riconosciuto's allegations which is chronicled in his report (Bua Report 42-73) and supported by the records of the investigation, the Special Counsel "found Riconosciuto to be a totally unreliable witness in connection with the allegations he has made about the alleged theft of PROMIS software. Riconosciuto's story about PROMIS reminds us of a historical novel; a tale of total fiction woven

against the background of accurate historical facts." (Bua Report 72.)[6]

This conclusion was based on inconsistencies in Mr. Riconosciuto's various statements regarding Dr. Brian's involvement (id. 42-53), the absence of any documentary evidence corroborating any aspect of Mr. Riconosciuto's claims despite his repeated assurances that such evidence existed and that he would provide the same to investigators (id. 68-71)[7], and the failure of any of the witnesses interviewed by the Special Counsel to corroborate any of his allegations regarding Dr. Brian. (Id. 53-66.) None of the individuals interviewed by the Special Counsel as a result of Mr. Riconosciuto's statements -- Peter Zokosky, A. Robert Frye, John Philip Nichols, Peter Videnieks, Earl Brian, Art Welmas, Sam Cross, [redacted], Dave Baird, Wayne Reeder, Scott Westley and several others -- were able to corroborate any of his allegations of a conspiracy. (See Bua Report 53-66.)

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[6] The Investigative Report of the House Committee on the Judiciary did not express an opinion about Mr. Riconsociuto's credibility. However, it does note that he "could not provide evidence other than his eyewitness account that Dr. Brian was involved in the PROMIS conversion at the reservation." (House Report 72.) In light of Dr. Brian's denial of Mr. Riconosciuto's charges, the Committee concluded that it was "not in a position to make findings of fact on Dr. Brian's role, but would strongly recommend" further investigation. (Id.)

[7] There was one document referred to in the House Report: a Riverside, California police report indicating that Dr. Brian was present at a shooting demonstration in Indio, California in September 1981. As reflected in the Special Counsel's report, the document was prepared in October 1991, ten years after the event it describes, and was based almost solely on statements provided to the Riverside police by Mr. Riconosciuto in October 1991. (Bua Report 61-66.)

The conclusion is further supported by the finding of the Congressional Task Force to Investigate Certain Allegations Concerning the Holding of American Hostages by Iran in 1980 that there is no credible evidence supporting the basic premise of Mr. Riconosciuto's allegations. That is, the Congressional Task Force found no credible evidence, during a year long investigation, of any attempt by the Reagan presidential campaign or persons associated with the campaign to delay the release of the American hostages in Iran during the 1980 campaign. (Joint Report of the Task Force to Investigate Certain Allegations Concerning the Holding of American Hostages by Iran in 1980 ["October Surprise Task Force Report"], Jan. 3, 1993, p. 5.) If there is no credible evidence supporting the existence of an October Surprise conspiracy, Mr. Riconosciuto's claims that the Reagan Administration entered into a conspiracy with Dr. Brian in order to reward him for his involvement in the October Surprise conspiracy are obviously called into question.

Finally, it should be noted that many of Mr. Riconosciuto's INSLAW-related claims have already been heard and rejected by a federal court. In 1992, Mr. Riconosciuto was tried and convicted on drug charges arising from his production and distribution of methamphetamine. (His involvement with drugs dates at least back to 1972 when he was convicted on PCP charges.) He was sentenced to 30 years. Mr. Riconosciuto unsuccessfully defended himself during the trial by claiming he was framed as part of a government effort to keep the truth about the INSLAW affair from

becoming public.[8] During the sentencing hearing, U.S. District Court Judge Robert J. Bryan spoke to Mr. Riconosciuto about his credibility:

> I think you have a loose connection with the truth, and I think all these things we have heard about over the course of this proceeding it [sic] is very hard to determine what is truth and what is fiction, and I'm not at all satisfied that you know the difference yourself in regard to a lot of the things that have been discussed.

(United States v. Riconosciuto, No. CR91-1034B (W.D. Wash.), transcript of Sentencing Hearing, May 7, 1992, pp. 37-38.) The Court arrived at the same assessment of his credibility as the Senate investigators, Judge Bua and this report.

In its Analysis and Rebuttal of the Bua Report, INSLAW argues that Mr. Riconosciuto's statements are not necessarily in conflict, that certain of the witnesses interviewed by the Special Counsel with intelligence backgrounds cannot be expected to tell the truth unless put under oath, and that the credibility of certain witnesses is called into question in light of various charges made against those witnesses. (INSLAW Rebuttal 49-54.) After carefully considering INSLAW's comments and acknowledging that the assessment of the credibility of certain witnesses must take into account their previous or current troubles with law enforcement authorities, we continue to find Mr. Riconosciuto to

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[8] As noted in the Special Counsel's report, "[T]he evidence against Riconosciuto at trial was overwhelming. The DEA in that case captured Riconosciuto delivering methamphetamine on videotape on more than one occasion. The testimony also established that Riconosciuto was running a large methamphetamine lab at the property where he was living." (Bua Report 67.)

be a wholly unreliable witness.

2. Ari Ben-Menashe

The second major source of information linking Dr. Brian to a conspiracy with Department of Justice officials and others to steal and then distribute internationally INSLAW's PROMIS software is Ari Ben-Menashe, who claims to be a former high-level Israeli intelligence officer. In 1992, Mr. Ben-Menashe published a book, Profits of War: Inside the Secret U.S. - Israel Arms Network (Sheridan Square Press, New York 1992), detailing his alleged involvement in various covert operations, including the October Surprise, arms sales to Iraq, the Iran Contra affair and others. In that book and in various statements he has made, Mr. Ben-Menashe claims to have first-hand knowledge that Dr. Brian and Robert McFarlane, the former National Security Adviser, provided Enhanced PROMIS to Israel. He claims to have either first or second hand information concerning the sale of PROMIS to the Singapore Armed Forces, Jordanian military intelligence organizations, Iraq, the Soviet Union and Canada. (See, e.g., House Report 64.) Mr. Ben-Menashe also claims that certain Israeli officials would be able to corroborate his allegations although he refuses to identify those officials.

Despite the concerns raised by INSLAW regarding the credibility of Dr. Brian's and of Mr. McFarlane's denials of Mr. Ben-Menashe's allegations, we concur with the Special Counsel's conclusion that Mr. Ben-Menashe's "testimony offers no support for the allegation that DOJ and Earl Brian conspired to steal and

distribute the software in which Inslaw claims proprietary rights." (Bua Report 81.) We base this concurrence primarily on the factors identified below as well as on the other factors identified in the Special Counsel's report.

First, Mr. Ben-Menashe's credibility has already been called into serious question by two congressional investigations. The October Surprise Task Force, led by Chairman Lee H. Hamilton and Congressman Henry J. Hyde, conducted a thorough investigation of the allegations that the Reagan campaign acted to delay the release of American hostages held in Iran until after the 1980 election. The Joint Report of the October Surprise Task Force reached the following conclusions about Mr. Ben-Menashe's allegations concerning the alleged October Surprise conspiracy, many of which also form the basis of his INSLAW testimony:

> Credible testimonial and documentary evidence show Ben-Menashe to be totally lacking in credibility regarding his allegations about meetings in Spain in 1980 ... Aside from early biographical details, virtually everything Ben-Menashe told the Task Force has been found to be false. (p. 97.)[9]
>
> According to numerous pieces of documentary evidence, Ben-Menashe's account is demonstrably false from beginning to end. (p. 110.)
>
> Ben-Menashe's testimony is impeached by documents and is riddled with inconsistencies and factual misstatements which undermine his credibility. Based on the documentary evidence available, the Task Force has determined that Ben-

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[9] Among the facts that the Task Force found to be false was the existence of a relationship between Mr. Ben-Menashe and Rafi Eitan. The report indicates that Mr. Eitan claims he does not know Mr. Ben-Menashe and has never met him. (Id. 97.) This is of particular relevance to the INSLAW allegations as Mr. Ben-Menashe claims that Mr. Eitan provided much of his information to him and that Mr. Eitan was a key player in the misappropriation of PROMIS.

> Menashe's account of the October meetings, like his other October Surprise allegations, is a total fabrication. (p. 148.)

The Task Force also concluded, "There is no credible evidence supporting any attempt, or proposal to attempt, by the Reagan Presidential Campaign -- or persons representing or associated with the campaign -- to delay the release of the American hostages in Iran." (October Surprise Task Force Report 8.)

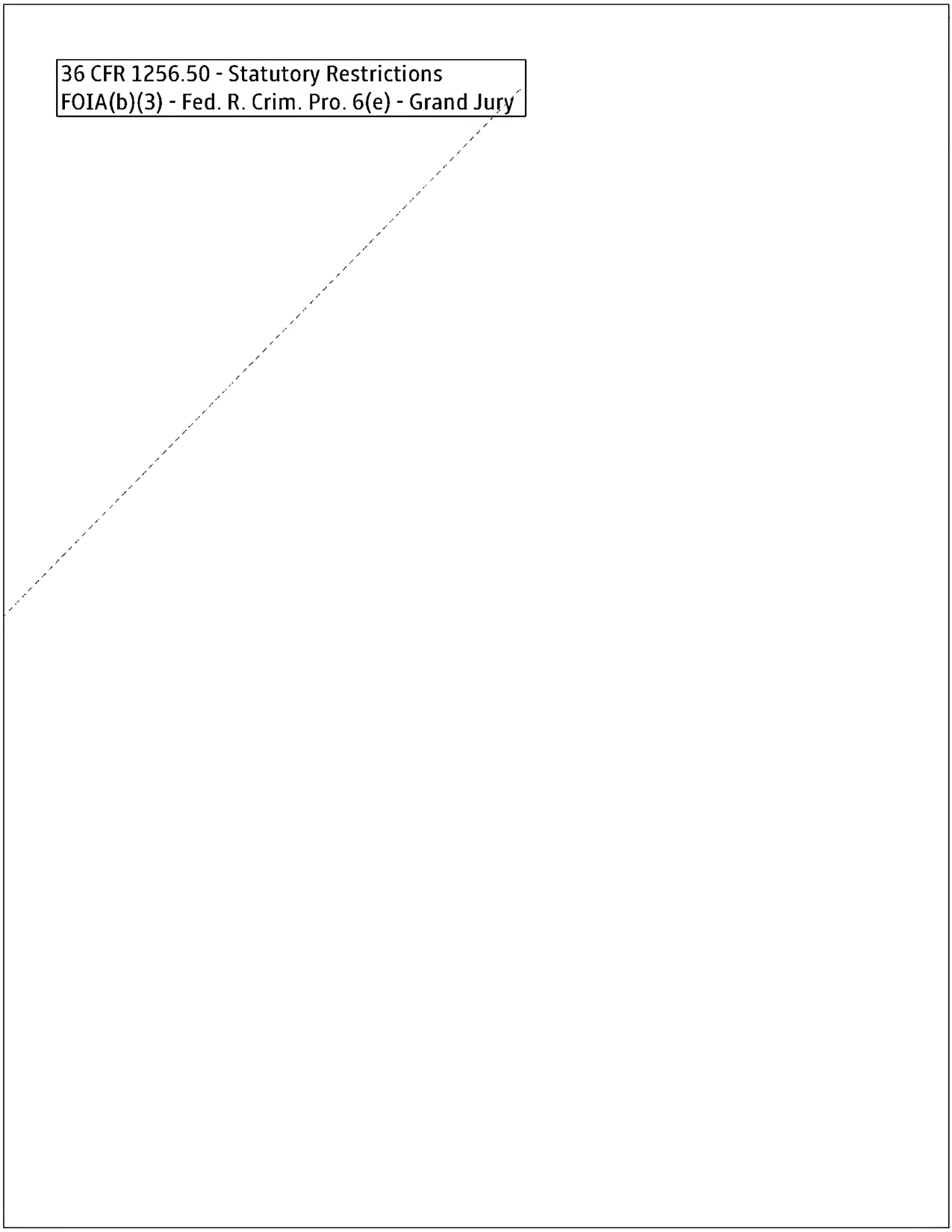
The Special Counsel appointed by the Subcommittee on Near Eastern and South Asian Affairs of the Senate Committee on Foreign Relations to investigate the October Surprise allegations, Reid H. Weingarten, reached similar conclusions regarding Mr. Ben-Menashe's credibility. In his report, he found:

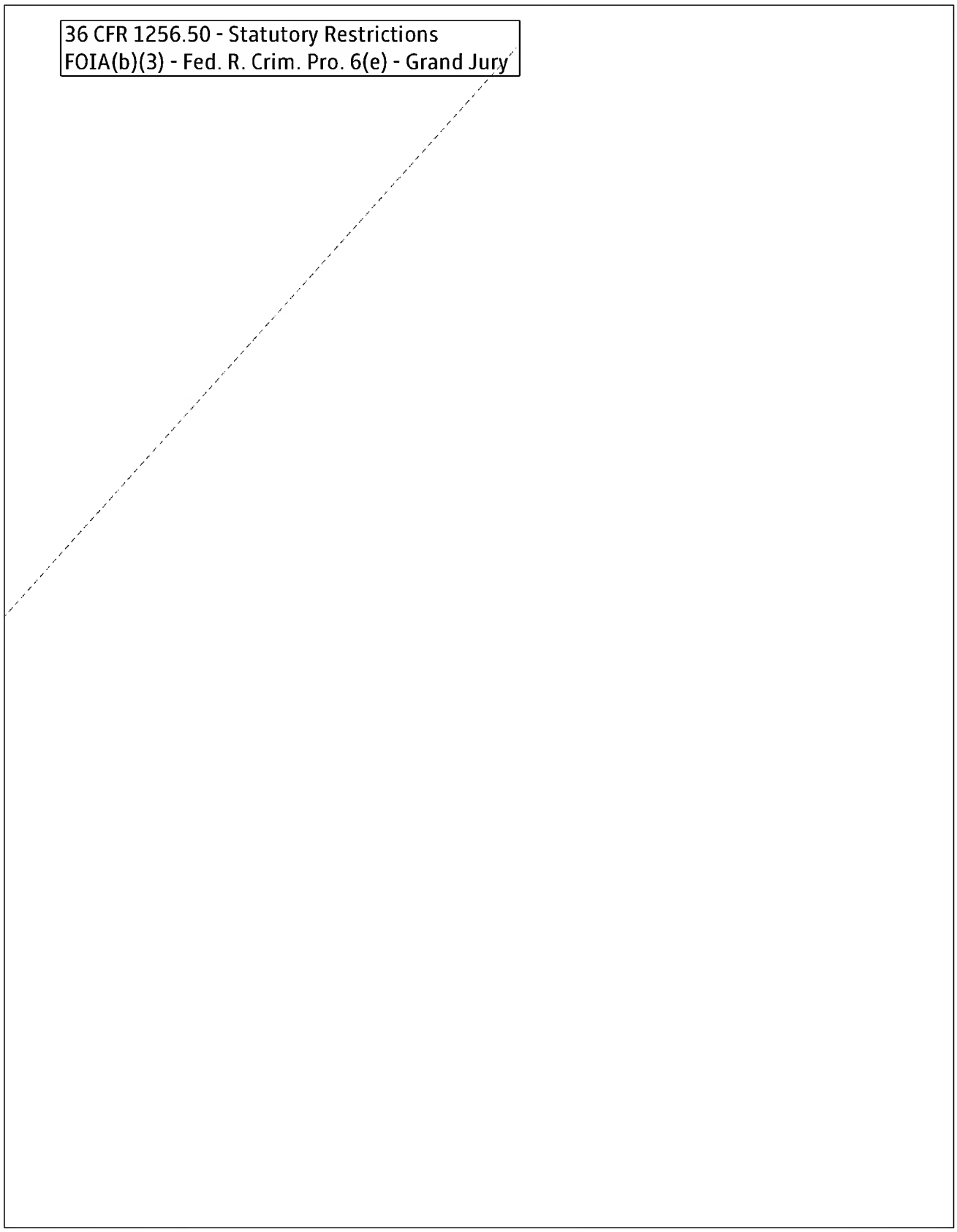
> The primary sources for this allegation -- Brenneke, Ben Menashe, and Lavi -- have proven wholly unreliable. Their claims regarding alleged secret meetings are riddled with inconsistencies, and have been contradicted by irrefutable documentary evidence as well as by the testimony of vastly more credible witnesses. Not one aspect of Ben-Menashe's story, which alleges a series of meetings in Madrid, Amsterdam, Paris and Washington in furtherance of an "October Surprise" conspiracy promoted by Israel, was ever corroborated ... In sum, the Special Counsel found that by any standard, the credible evidence now known falls far short of supporting the allegation of an agreement between the Reagan campaign and Iran to delay the release of the hostages.

(The "October Surprise" Allegations and the Circumstances Surrounding the Release of the American Hostages Held in Iran, Report of the Special Counsel, November 19, 1992, pp. 114-115.)

Second,

36 CFR 1256.50 - Statutory Restrictions
FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury





Fourth, neither the House investigation nor the Special Counsel's investigation was able to uncover any credible evidence corroborating any aspects of Mr. Ben-Menashe's story. Mr. Ben-Menashe repeatedly promised House investigators that he would provide documentary evidence relating to the sale of PROMIS software and demonstrating the participation of Dr. Brian in those sales. He failed to produce any such documents or any corroborating witnesses. Finally, during his sworn statement to House investigators, he stated that he would not make that documentation available or identify those witnesses until he was "called as an official witness." He proved to be equally unforthcoming with the Special Counsel. Although the Special Counsel subpoenaed the relevant records in Mr. Ben-Menashe's possession, he never produced any documents. (Bua Report 78.)

In light of these factors, there is no reason to give any weight to Mr. Ben-Menashe's allegations.

3. Charles Hayes

INSLAW also relies heavily on the statements of Charles Hayes, a Kentucky salvage dealer who claims to have purchased word processing equipment that contained Enhanced PROMIS from a local United States Attorney's office. He also "previously told Mr. and Mrs. Hamilton that he met with Earl Brian, Richard Secord and Oliver North in Sao Paulo, Brazil, in the mid-1980's while those three individuals were purchasing weapons for the Contras in Nicaragua, and Brian was marketing INSLAW's PROMIS software to

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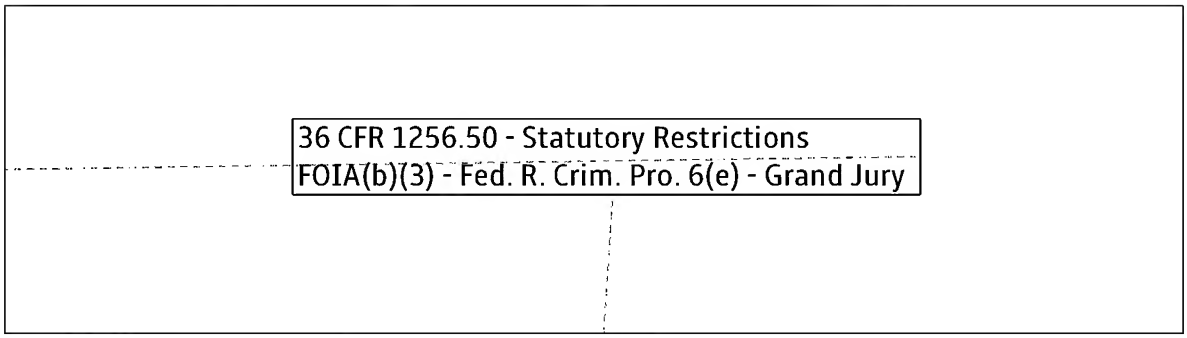
patently absurd.

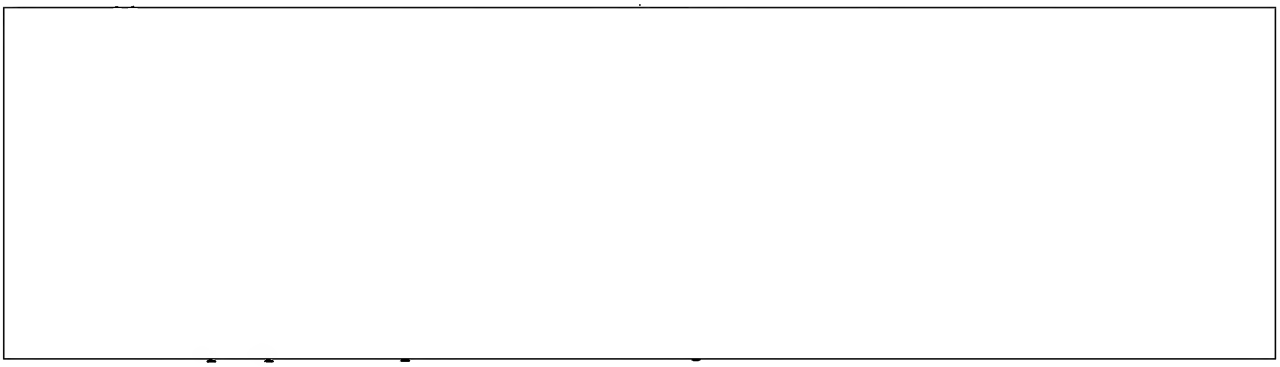
the government of Brazil." (INSLAW Rebuttal 55.)[11]

The Special Counsel concluded as follows:



(Bua Report 85.) Mr. Hayes had also failed to provide any documentation corroborating his allegations to House investigators. (House Report 66.)

INSLAW, which has not had the benefit of reviewing Mr. Hayes' grand jury testimony, is critical of the Special Counsel's conclusions based in large part on a statement allegedly signed by Mr. Hayes regarding the content of his grand jury testimony. After carefully reviewing Mr. Hayes' sworn statements to the Special Counsel's grand jury and to House investigators as well as the Special Counsel's analysis and INSLAW's rebuttal, we concur with the findings of the Special Counsel.



4. Circumstantial Evidence of a Conspiracy

In addition to the witnesses identified above, INSLAW points to a series of events involving various corporate entities and their principals as evidence of a conspiracy involving Dr. Brian and Justice Department officials to steal the PROMIS software. These allegations, which are set forth in detail in Mr. Hamilton's December 22, 1989 affidavit, can be summarized as follows:

(1) Starting in 1983, Hadron, Inc., a company owned by Dr. Brian, attempted to obtain the PROMIS software through a variety of different strategies. Mr. Hamilton identifies two alleged acts that directly involve Hadron as proof of its involvement in this alleged conspiracy. First, Mr. Hamilton claims that he received a telephone call from Dominic Laiti, chairman of Hadron, shortly after Modification 12 to the PROMIS contract was agreed to in which Mr. Laiti inquired as to whether INSLAW was interested in selling its rights to PROMIS. Among other things, Mr. Hamilton claims, "When I declined to meet with Laiti to discuss his proposition, Laiti said: 'We have ways of making you sell.'" (Hamilton 12/22/89 Decl. 8.) Second, Mr. Hamilton alleges that a 1983 trip to New York involving various Hadron officials was for the purpose of raising funds to acquire PROMIS.

(2) Mr. Hamilton alleges that individuals involved with 53rd Street Ventures, a New York venture capital fund with a small equity interest in INSLAW, were attempting to acquire INSLAW or PROMIS on behalf of individuals with "ties at the

highest level of the Reagan Administration." (Hamilton 12/22/89 Decl. 13.) These assertions are based largely on Mr. Hamilton's account of two conversations he allegedly had, one with Jonathan Ben Cnaan, an account executive for the fund, and the other with Daniel Tessler, the chairman of the company that managed the fund.

(3) Mr. Hamilton also alleges that the Justice Department encouraged a 1986 hostile takeover bid initiated by Systems and Computer Technology, Inc. ("SCT") "in order to preclude INSLAW from seeking redress in the courts for DOJ's 1983 theft of the PROMIS software and to remove INSLAW as an obstacle to the planned award of Project EAGLE to Tisoft and the planned implementation of PROMIS on the Project EAGLE computers." (INSLAW Rebuttal 61.)[12]

The Special Counsel spent a considerable amount of time investigating these allegations. He summarized the results of that effort as follows:

> We tried to interview virtually all of the witnesses identified in Mr. Hamilton's affidavit and in the memoranda submitted by Inslaw's lawyers as supporting these claims. As is described in detail in the following pages, we found that many of the witnesses deny making the statements attributed to them by Mr. Hamilton. In other cases, the individuals confirmed the particular statements attributed to them, but then admitted that they were only repeating things that other people had told them. In the end, we found that much of the supposed "circumstantial evidence" identified by INSLAW does not in fact exist, and that what

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[12] INSLAW and Mr. Hamilton make additional allegations involving Edward Hurley, a Hadron vice president, and a contract award to a Hadron subsidiary. These charges are fully and adequately addressed in the Special Counsel's report and do not warrant additional comment here. (See Bua Report 98-101.)

> does exist is woefully insufficient to support a finding of a conspiracy, or, indeed, any connection between INSLAW and PROMIS on the one hand, and Hadron or Earl Brian on the other.

(Bua Report 86.)

(a) Evidence of Direct Hadron Involvement

The two individuals identified by Mr. Hamilton -- Paul Wormeli and Marilyn Titus -- as the source of his information regarding the 1983 fundraising trip to New York informed the Special Counsel that they have no reason to believe that the purpose of the trip was to raise funds to purchase PROMIS as alleged by Mr. Hamilton. (See Bua Report 88-90.) Mr. Hamilton stated in his affidavit that Ms. Titus, a secretary to Mr. Wormeli, had informed him that the "purpose of the trip was to 'raise capital for the court [i.e., PROMIS] software.'" (Hamilton 12/22/89 Decl. 13.) However, Ms. Titus informed the Special Counsel that she "had never heard any discussion at all about Hadron obtaining PROMIS software, and she does not believe that she ever told William Hamilton that the purpose of the 1983 fund raising trip was to raise capital to obtain PROMIS or Inslaw." (Bua Report 90.)

Furthermore, Mark Kesselman (with whom Mr. Laiti and Mr. Wormeli met during their trip to New York) was unable to support Mr. Hamilton's charges. Mr. Laiti informed the Special Counsel that the 1983 New York trip had nothing to do with acquiring INSLAW or PROMIS and that he had no recollection of any efforts to acquire either the company or the software. He also stated that he did not recall ever talking to Mr. Hamilton, let alone

threatening him. Dr. Brian also denied any knowledge of any effort by Hadron to acquire INSLAW. Finally, Donald Stromberg, a former president of Simcon, informed Senate investigators that he never heard mention of either INSLAW or Mr. Hamilton while he was at Simcon. (Senate Staff Report 30.)

In light of the fact that the only "evidence" of a direct involvement by Hadron or its principals in an alleged conspiracy is Mr. Hamilton's sworn affidavit and that the alleged sources of the information reflected in that affidavit have disavowed its accuracy, we concur with the finding of the Senate staff that there is "no proof that officials of Hadron, Inc. were involved in a conspiracy with officials of the Department of Justice to undermine INSLAW in order to acquire its assets." (Senate Staff Report 28.)

(b) 53rd Street Ventures

INSLAW is particularly critical of the Special Counsel's conclusions regarding the alleged involvement of 53rd Street Ventures in an effort to acquire INSLAW. INSLAW's criticisms focus on the Special Counsel's failure to interview Jonathan Ben Cnaan and the Special Counsel's willingness to accept the unsworn statements of Daniel Tessler, the chairmen of 53rd Street Ventures; Patricia Cloherty, Mr. Tessler's wife; and Richard D'Amore, a partner at Hambro International, another venture capital firm; over Mr. Hamilton's sworn testimony.

According to Mr. Hamilton's affidavit:

> Jonathan Ben Cnaan, an account executive with 53rd Street Ventures, a New York City venture capital firm that then had

> a small equity investment in INSLAW, described a meeting in September 1983 at 53rd Street Ventures with a "businessman with ties at the highest level of the Reagan Administration" who was eager to obtain the PROMIS software for use in federal government work. The meeting took place several months after the contract disputes with DOJ had emerged, and the businessman assured 53rd Street Ventures that INSLAW would never be able to resolve them. According to Ben Cnaan, the businessman was annoyed that I had rebuffed an attempt earlier that year to buy INSLAW in order to obtain title to the PROMIS software.

(Hamilton 12/22/89 Decl. 13.) Despite efforts made by the Special Counsel, he was not able to locate Mr. Ben Cnaan. (Bua Report 97-98.)

With the aid of INSLAW and an Israeli journalist, we were able to locate Mr. Ben Cnaan in Israel. We interviewed him by telephone.

Mr. Ben Cnaan, a native of Israel, stated that he was employed by Allen Patricof and Associates ("APA") in New York from 1981 to 1987. 53rd Street Ventures was one of the venture funds which he helped to manage while at APA. He stated that the first investment he made for APA was a $100,000 investment in INSLAW. He said that he was a "follower" investor and did not take an active role in the negotiation of the deal.

Mr. Ben Cnaan stated that he never met with anyone with ties to high level officials of the Reagan Administration and that he never had any conversation with anyone regarding the government's alleged desire to obtain PROMIS. Furthermore, he stated that he had no reason to believe that the federal government had any desire to obtain the PROMIS software. He also said that he had no recollection of any of the events described in the above-

excerpted paragraph from Mr. Hamilton's declaration. Mr. Ben Cnaan denied that anyone ever told him that INSLAW would be unable to resolve its conflicts with the government. He also denied that he was ever told that someone was annoyed that Mr. Hamilton had rebuffed an earlier attempt to purchase INSLAW.

Mr. Ben Cnaan called the allegations contained in Mr. Hamilton's declaration "fabrications" and the result of a "creative imagination."

Mr. Hamilton also claims that Mr. Tessler attempted to coerce him into turning over control of INSLAW and that his wife, Patricia Cloherty, informed Mr. D'Amore that she "knew all about" Dr. Brian's role in the INSLAW matter. (Hamilton 12/22/89 Decl. 13-14.) He also asserts that Daniel Tessler is a relative of Alan Tessler, an attorney responsible for the mergers and acquisition work of Dr. Brian and Hadron. Mr. Tessler, Ms. Cloherty and Mr. D'Amore all denied these accusations during interviews with the Special Counsel. (Bua Report 91-96.) Mr. Tessler also stated that he was not related to Alan Tessler.

Nevertheless, INSLAW argues that these individuals are not credible. Specifically, INSLAW asserts that Mr. Tessler's statement that "to his knowledge, his wife, Patricia Cloherty, has no knowledge of Earl Brian" and Ms. Cloherty's subsequent statement that she once served on the board of the National Association of Small Business Investment Companies with Dr. Brian indicate their lack of trustworthiness. (INSLAW Rebuttal 58.) We disagree. We do not find it particularly unusual that an

individual would not know all the business associates of his or her spouse. Furthermore, even if Mr. Hamilton's statements are true, it would not connect either Dr. Brian or Hadron to any wrongdoing in connection with INSLAW or PROMIS.

(c) Systems and Computer Technology, Inc. ("SCT")

The Special Counsel reviewed in detail the events surrounding a 1986 effort by SCT to purchase INSLAW from the Hamiltons. (Bua Report 104-106.) A review of the Special Counsel's report and the memoranda memorializing interviews conducted with key SCT officials reveals that none of those involved with the attempted purchase were aware of any connection between either the Justice Department or Dr. Brian, on the one hand, and SCT's efforts to purchase INSLAW, on the other.

Nevertheless, INSLAW continues to assert that SCT was acting in union with Dr. Brian and the Department when it approached INSLAW. However, the "support" for this accusation contained in INSLAW's Rebuttal is nothing more than a series of unsubstantiated beliefs which INSLAW does not even attempt to corroborate:

> INSLAW believes that the PROMIS software was intended by DOJ to be the uniform case management software for the Project EAGLE computers. INSLAW further believes that Earl Brian's Hadron, Inc. was originally slated to receive the Project EAGLE contract award by DOJ as a sweetheart gift from Brian's long-time friend, then Attorney General Meese. INSLAW believes that Brian and DOJ abandoned the plan to use Hadron as the vehicle for the contract in the fall of 1985, following the failure of the covert DOJ effort to force INSLAW's liquidation.
>
> INSLAW believes that, by January 1986, Brian and DOJ had substituted Tisoft, Inc. as the vehicle for the planned sweetheart Project EAGLE award. That month, Tisoft was

> awarded a $30 million computer systems contract by Meese's Justice Department, and Tisoft amended its articles of incorporation to permit the sale of common stock to new outside owners who would then have majority control of the company.
>
> Margaret Wiencek, the former Director of Administrative Services at Earl Brian's Financial News Network (FNN), claims that Patrick R. Gallagher of Tisoft, Inc. was also someone who regularly telephoned the chairman's office at Earl Brian's FNN Headquarters in Los Angeles during at least 1987.
>
> INSLAW believes that DOJ encouraged the SCT hostile takeover bid for INSLAW in 1986 in order to preclude INSLAW from seeking redress in the courts for DOJ's 1983 theft of PROMIS software and to remove INSLAW as an obstacle to the planned award of Project EAGLE to Tisoft and the planned implementation of PROMIS on the Project EAGLE computers.

(INSLAW Rebuttal 60-61 [emphasis added].) This is pure conjecture on the part of INSLAW.

Furthermore, House investigators interviewed several individuals involved with the EAGLE contract to determine if there was any link with INSLAW of the type alleged by INSLAW. Based upon our review of those interviews, there is no substantial evidence suggesting such a link. Similarly, the report of the Senate staff study "found no proof that INSLAW's problems with the Department were connected to the Department's 'Project EAGLE' procurement." (Senate Staff Report 31.)

5. John A. Belton

In its Analysis and Rebuttal of the Bua Report, INSLAW is critical of the Special Counsel for failing to interview John A. Belton, a former Canadian stockbroker, who has apparently been investigating the alleged illegal distribution of PROMIS in Canada and the role of Dr. Brian and Hadron in that distribution.

According to INSLAW, the June 10, 1993 memorandum from Mr. Belton to Mr. Hamilton, which is attached as Exhibit A to INSLAW's Rebuttal, "documents the existence of a business relationship between Earl Brian's Hadron, Inc., and two Canadian computer services companies on a large [PROMIS] software sale to the Government of Canada in 1983." (INSLAW Rebuttal 38.)

We spoke with Mr. Belton by telephone. According to Mr. Belton he was employed by Nesbitt, Thomson, Bongard, Inc. ("NTB"), a Canadian investment bank, from 1968 to February 26, 1982. He stated that he left NTB in 1982 following his discovery that NTB was involved in securities fraud with Dr. Brian and others. He has subsequently filed two suits against NTB, both of which are still pending. The suits apparently focus on the alleged securities fraud and include a claim for constructive dismissal. Mr. Belton stated that both suits should be settled shortly. Since leaving NTB, he has spent a majority of his time investigating his claims and prosecuting his cases.

Mr. Belton stated that he was aware of several sales of PROMIS to various entities by Dr. Brian or others involved in the "intelligence community." He stated that Dr. Brian was responsible for selling the "U.S. version" of the software through Hadron, Inc., while Robert Maxwell, the late British publisher, was responsible for selling the "Israeli version" of the software. According to Mr. Belton, Dominic Laiti, the president of Hadron, Inc., is a full-time employee of the Central Intelligence Agency, and Hadron was a CIA "cut-out." He also

claims that Janos Pasztor, vice-president of NTB, was a CIA agent. "Reliable sources" also allegedly informed Mr. Belton that Dr. Brian has acted as an agent of the National Security Agency.

Mr. Belton alleges that Dr. Brian and an NTB official sold PROMIS to the Bank of Montreal for $2 million in May 1987. He stated that he has first-hand knowledge of this sale although he refused to explain how he came to have that knowledge. Mr. Belton also claimed to have a document that reflects the sale; however, he said that he would not provide that document to anyone at this time. He stated he feels that he should not release any documents or further information about this sale until after his lawsuits have been settled.

Mr. Belton also claims that a sale of PROMIS was made to a Nuclear Regulatory Commission facility in New Mexico in 1983. He believes the facility was Los Alamos. According to Mr. Belton, the sale was made by Trans World Arms in Montreal and ORA. ORA is allegedly the Israeli half of a multi-billion dollar slush fund made up of Israeli and U.S. funds. Mr. Belton stated that the fund has been used, among other things, to fund arm sales to Iraq. He stated that his primary source of information concerning this sale was Mr. Hamilton. However, he claims that he confirmed Mr. Hamilton's allegations with a "very, very reliable source." He refused to identify that source.

Mr. Belton alleges that this same source informed him that the Canadian Security Intelligence Service purchased $10 to 12

million worth of PROMIS software in 1984. Again, he refused to identify the source or to provide any additional evidence of such a sale.

During our conversation, Mr. Belton claimed to have information about other sales of the PROMIS software. However, he was unable to supply any potentially corroborating information with respect to any of those alleged sales. He also claimed that he learned from a reliable source that former President George Bush put NTB and the Bank of Montreal under CIA control in 1976 while Bush was the Director of the CIA. He also claims that he is in the process of negotiating the return of $590 million to the pensioners of Mirror Newspapers in London. Mr. Belton also claims to have reliable information regarding conspiracies involving Robert Maxwell, Iraqi arm sales, Iranian arm sales and the October Surprise.

We found Mr. Belton to be unbelievable. He merely made a number of accusations based on unnamed "reliable" witnesses while refusing to identify those sources or provide any documentary support for those allegations. His claim that such documents exist but that he does not want to release them to us detracts rather than adds to the credibility of his allegations. Furthermore, he seemed to be a man dedicated to prevailing on his suits against his former employers.

6. The Alleged Videnieks/Hadron Connection

INSLAW has also asserted that the Justice Department's contracting officer, Peter Videnieks, had a relationship with

Hadron, Inc., and its officers and asserts that relationship as further evidence of a conspiracy involving Dr. Brian and the Department. INSLAW's allegations have centered on the statements of two individuals. First, INSLAW focuses on the statements of John Schoolmeester, a former Customs Service employee. Mr. Schoolmeester asserts that when Mr. Videnieks was employed at Customs prior to moving to the Department of Justice, he handled some contracts between Customs and Hadron. Mr. Schoolmeester informed the Special Counsel that Mr. Videnieks almost certainly would have met Dominic Laiti, Hadron's president, around that time as Mr. Laiti "met everyone in government." In light of Mr. Schoolmeester's admission that he has no first-hand knowledge that Mr. Laiti and Mr. Videnieks ever met, the investigation conducted by the Special Counsel and a review of Mr. Schoolmeester's 1991 statement to House investigators, we concur with the Special Counsel's conclusion that this allegation "falls far short of anything that could fairly be called evidence of a conspiracy." (Bua Report 104.)

Second, INSLAW points to the sworn statement of Margaret Wiencek, a former employee of Dr. Brian's Financial News Network, obtained by investigators for the U.S. Customs Service Internal Affairs Division in February 1993. In that statement, Ms. Wiencek states:

> 4. Peter Vedinecks [sic] and Michael Riconisuitto [sic] (as I am unaware of the proper spelling of these individuals' names, I have spelled them phonetically as I would have done on any phone log when uncertain of the spellings of names) were individuals who made several phone calls to FNN during the first quarter of 1987 asking for Mr.

> Bolen [FNN's chief financial officer] and/or Dr. Brian and leaving messages for Mr. Bolen and/or Dr. Brian requesting that Mr. Bolen and/or Dr. Brian return calls...
>
> 5. In the course of my official duties, I became aware of a file in Mr. Bolen's office marked M.I.S. that contained copies of correspondence relating to the PROMIS computer software product. Dominic Laiti, then CEO of Hadron, Inc., a company controlled by Dr. Earl W. Brian through Infotechnology, Inc. was either the author or recipient of the letters in question in this file...

(Wiencek, 2/7/93 p.1.) It is unclear whether the Special Counsel investigated these allegations.

Our investigation, however, has identified several factors that cast doubt on Ms. Wiencek's credibility. First, Ms. Wiencek has filed suit against Dr. Brian and FNN charging, among other things, that she was improperly discharged from her position with FNN in 1990 as a result of her refusal to participate in wrongdoing taking place at FNN. Ms. Wiencek stated that she has been laid off from several jobs since 1990 and is currently unemployed. She is representing herself in the litigation.

Second,

36 CFR 1256.50 - Statutory Restrictions
FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Third, the Customs Service Internal Affairs Division has indicated their intention to close their two-year investigation into allegations that Peter Videnieks committed perjury at the trial of Michael Riconosciuto when he testified that he did not know Dr. Brian due to a lack of credible evidence supporting those allegations.[13] According to Customs Service investigators, the investigation was initiated as the result of information received by an informant. The informant alleged that Mr. Videnieks committed perjury when he denied knowing Dr. Brian and others during the trial of Mr. Riconosciuto on drug charges. Mr. Riconosciuto unsuccessfully defended himself in that litigation by claiming that he was framed by the government as part of a greater INSLAW-related conspiracy. Due to the fact that Mr. Videnieks had returned to Customs after leaving the Justice Department and was a Customs employee at the time he testified at trial the anonymous charges against Mr. Videnieks were investigated by Customs Service Internal Affairs . Despite Ms. Wiencek's signed statement, the Customs Service investigators concluded, after what they described as an extensive investigation, that there was no credible evidence that Mr. Videnieks committed perjury when he denied knowing Dr. Brian. Despite promises by Mr. Riconosciuto and his former girlfriend to

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[13] The Customs Service's intention to close the investigation was conveyed to us in a telephone conversation with Customs Service Office of Internal Affairs Regional Director William Rohde and Deputy Director John Kelly on March 30, 1993. According to Mr. Rohde, his office intends to prepare a detailed report of their investigation over the next few months.

Customs investigators that they would provide physical proof that Mr. Videnieks and Dr. Brian knew each other, they failed to produce any such evidence.[14]

And fourth, Ms. Wiencek contradicted two important details contained in her written statements and in her sworn statement to House investigators during an interview pursuant to this review. During that interview, Ms. Wiencek stated that while she was organizing files at FNN she discovered an unlabelled file that contained promotional material regarding a software program called PROMIS. She then went on to state that she put the material in another file and labelled it "MIS" as she understood the PROMIS software to be a management information system. We asked her several times whether the file was labelled at the time she found it, and on each occasion she stated that the file was unlabelled and that she was the one to label it "MIS." In both her signed statement to Customs investigators and her sworn statement to House investigators, Ms. Wiencek stated that the file was already marked "MIS" when she found it.

The second inconsistency involves her testimony concerning the contents of that file. During our interview, Ms. Wiencek

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[14] Assistant United States Attorney Marc Bartlett was the lead prosecutor in the case against Mr. Riconosciuto. Mr. Bartlett informed us that he believed Mr. Videnieks' testimony during the trial was truthful. In the government's Sentencing Memorandum, it stated the following: "Regardless of the cause, the [Riconosciuto's] lies have wreaked havoc on numerous fronts. At an individual level, people such as Peter Viedinicks [sic] whose names were included in the defendant's seamless web of lies and paranoia have suffered countless personal and professional problems." United States v. Riconosciuto, No. CR91-1034B (W.D. Wash.), Government's Sentencing Memorandum, April 29, 1992, p. 3.

stated that there were two to four letters included with the promotional material in the file. She stated that one letter appeared to be from the federal government as she recalls seeing "United States Government" at the top of the letter. The only other letter she specifically recalled was one that she believed was from Hadron, Inc. She specifically stated that the letter did not have any other names on it and that the letter was not from Dominic Laiti. She also stated that she did not recall seeing any letter in the file with Mr. Laiti's name on it. However, in her statements to House investigators and to Customs investigators, Ms. Wiencek stated that Mr. Laiti was either the author or the recipient of the letters in question.

Even if Ms. Wiencek's statements were true, we believe that they are insufficient in conjunction with the other evidence reflected in this report and the Special Counsel's Report to be considered significant evidence of a conspiracy. Furthermore, in light of the discussion above and the repeated denials of both Dr. Brian and Mr. Videnieks, we believe that her statements lack credibility.

7. Conclusions Regarding a Brian/DOJ Conspiracy

Based on our review of all of the INSLAW allegations concerning a conspiracy between Dr. Brian and Hadron, Inc., on the one hand, and the Department of Justice, on the other, to acquire PROMIS or to destroy INSLAW, we conclude that there is no

credible evidence of such a conspiracy.[15] This conclusion is in accord with the conclusions of both the Special Counsel (Bua Report 121-123) and the Senate Staff Report (Senate Staff Report p. 30).

D. There Is Insufficient Evidence to Conclude that INSLAW's PROMIS Has Been Distributed by the Department of Justice to Other Agencies or Departments of the U.S. Government.

1. There Is No Evidence that The FBI's FOIMS System Was Pirated From or Based on PROMIS.

a. The Allegations.

Since 1991, INSLAW has repeatedly asserted that the Federal Bureau of Investigation installed and is running PROMIS under the name Field Office Information Management System ("FOIMS"). These allegations are based primarily on two sources of information: Terry D. Miller, president of Government Sales Consultants, Inc., and an unnamed "confidential senior DOJ source" who, according to INSLAW, claims that former Acting Director of the FBI John Otto admitted to him that FOIMS was actually PROMIS. According to INSLAW's theory, the FBI and DEA were each ordered by the

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[15] There are several additional individuals other than those identified in this report who have been identified by INSLAW or their sources as having first-hand knowledge of a conspiracy. One such person is Lois Battistoni, a former employee of DOJ's Criminal Division. The Special Counsel's investigation revealed that she has absolutely no first hand knowledge of any relevant events and that her leads were dead-ends. (Bua Report 106-113.) A review of the files maintained by House investigators indicates that they too spent a considerable amount of time speaking to individuals identified by Ms. Battistoni without uncovering any credible evidence that corroborates the conspiracy allegations. The information provided by INSLAW's other sources also appears to lack credibility or is impossible to corroborate.

Department of Justice in 1988 to implement PROMIS and to get rid of their then existing case tracking software.

Despite the great importance placed on these allegations by INSLAW, there is simply no evidence that the FBI ever installed or used PROMIS or that FOIMS is some sort of derivative of PROMIS. (See Bua Report 141-146.) The FBI has always maintained that it never used PROMIS and that the FOIMS system was developed entirely in-house at the FBI. As the House Committee Report makes clear, Mr. Miller has no first-hand knowledge of the use of PROMIS by the FBI but has merely been repeating rumors that FOIMS contains PROMIS software stolen from INSLAW. (House Report 60.) Further, Mr. Otto denied that he ever said that FOIMS is PROMIS. (Bua Report 143.) The unnamed source who allegedly heard Mr. Otto make the admission never came forward during the Special Counsel's investigation or during our investigation despite our repeated requests to the Hamiltons and INSLAW's counsel to encourage this and other alleged sources to cooperate. Finally, the Special Counsel retained Professor Dorothy Denning, Chair of the Computer Science Department at Georgetown University, to compare FOIMS and PROMIS. After reviewing the functionality of the programs, Professor Denning concluded that PROMIS, which is written in the COBOL computer language, is so different from FOIMS, which is written in the NATURAL/ADABASE language, that one could not have served as a platform for the development of the

other.[16] She also concluded that it was not necessary to compare the code of the two programs. (Bua Report 145-146.)

The Special Counsel concluded that the FBI's FOIMS software is not PROMIS or any derivative of PROMIS. The House Committee also failed to uncover any evidence supporting INSLAW's allegations though it recommended further investigation:

> While there is no specific evidence that PROMIS is being used by the FBI, the matter could be resolved quickly if an independent agency or expert was commissioned to conduct a code comparison of the PROMIS and FOIMS system.

(House Report 61.)

INSLAW is extremely critical of the Special Counsel's analysis. (INSLAW Rebuttal 31-34.) INSLAW's principal criticism is the failure of Professor Denning actually to compare the code of the FOIMS program to the code of the PROMIS program.[17] It

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[16] The original version of FOIMS was written in COBOL. However, according to Gordon Zacrep who has been involved in the development of FOIMS since its earliest days in 1977, FOIMS was rewritten in the NATURAL language beginning in 1983. Mr. Zacrep believes the first installation of the NATURAL version of FOIMS was in 1985. He said the system was converted to the NATURAL language because of the greater power of that language as compared to COBOL.

[17] INSLAW also points to "possible dissembling" by the FBI as evidence of some type of cover-up. For example, INSLAW quotes John Maguire, the founder of the company that markets the NATURAL programming language, for the proposition that the description of the FOIMS system as containing 570,000 lines of code was "wrong by an order of magnitude." (INSLAW Rebuttal 33.) However, our discussion with Mr. Maguire revealed that his statement had been badly misrepresented by INSLAW. He did say that he had never heard of a single "program" with over 500,000 lines of code. He told us that programmers typically would create large complicated software systems by combining a large number of smaller discrete "programs." This allows for greater ease in debugging and otherwise managing the system. When we described the general contours of the FOIMS system (i.e. the number of programs and the number of lines of code), Mr. Maguire stated that such an

should be noted, however, that INSLAW does not identify any additional support for these allegations in its rebuttal papers.

b. Our Investigation Confirmed that There Is No Relationship between FOIMS and PROMIS.

Despite the fact that there is absolutely no support for INSLAW's claims (other than the statements allegedly made by the anonymous source), we made a considerable effort to investigate INSLAW's allegations about the connection between FOIMS and PROMIS because of the importance placed on these allegations by INSLAW in its rebuttal papers and in correspondence with us. Our investigation confirmed that FOIMS is not in any way related to PROMIS and that there is no evidence that PROMIS has ever been used by the FBI.

Our investigation proceeded on two tracks. First, we spoke to several FBI officials with varying degrees of involvement in the development and operation of the FOIMS system over the years. We also reviewed documents made available to us by the FBI regarding the early development of FOIMS as well as annual FOIMS System Plans. It appears that the concept for what eventually became FOIMS originated in 1977. At that time, the FBI committed itself to developing a system that would allow individual FBI field offices to coordinate their many tasks. (Thus, the name: Field Office Information Management System.) Coding on the prototype program -- which would be installed in the Richmond, Virginia field office -- began immediately in the COBOL computer

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arrangement sounded reasonable to him.

language. In 1979, the Richmond prototype was installed in the New York City office to see how it would run in a large office. Shortly thereafter, the FBI decided to change the hardware they were using to run FOIMS from DEC minicomputers to IBM mainframes.

In 1983, FBI programmers began to rewrite the entire program in the more powerful NATURAL language. The first NATURAL FOIMS program was installed in 1985, and the NATURAL version slowly replaced the COBOL version around the country. The COBOL version of FOIMS was used in the Richmond and New York City offices until the late 1980s.

All of the individuals we spoke with and documents we reviewed are essentially consistent with the above summary. We did not uncover any evidence inconsistent with the basic premise that FOIMS was developed entirely in-house by the FBI.

The second track of our investigation focused, because of the importance placed on a code comparison by INSLAW and the House Judiciary Committee, on the retention of an expert to compare the code of the FOIMS and PROMIS programs. We retained Professor Randall Davis of the Massachusetts Institute of Technology for that purpose. Professor Davis is a professor in the Electrical Engineering and Computer Science Department at MIT and is the Associate Director of the Artificial Intelligence Laboratory. He is highly regarded in his field. In a letter dated January 26, 1994, INSLAW's counsel concurred with this assessment:

> Your decision to engage the services of Dr. Randall Davis of MIT as an expert witness to assist in this

comparison is appreciated. We are aware that Dr. Davis has served as an expert witness in computer software infringement cases in the federal courts, and we do not question his technical qualifications.

We attempted to seek input from INSLAW and its counsel prior to Professor Davis' code comparison in order to enhance the possibility that INSLAW would find his conclusions acceptable. Accordingly, we invited INSLAW's principals and INSLAW's counsel to meet with Professor Davis several weeks before the scheduled code comparison. It was hoped that Professor Davis would be able to ask questions of those individuals about the structure of the PROMIS code and the nature of INSLAW's claims as they relate to the FOIMS system. We also invited INSLAW to have a representative observe Professor Davis as he performed his code comparison. INSLAW refused both invitations despite repeated statements by INSLAW's principals and counsel that they wanted to participate in that process.[18] Among the reasons INSLAW stated for its refusal to participate in these efforts were our refusals to comply with INSLAW's requests for detailed records regarding the development and functionality of FOIMS and for direct access to the FOIMS code. We were unable to comply with these requests based on the FBI's determination that the release of such information would compromise the system's security. We do not think the FBI's position is unreasonable.

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[18] According to the Special Counsel's report, Mr. Hamilton also refused to participate in Professor Denning's comparison of FOIMS and PROMIS. (Bua Report 144-145.)

INSLAW did, however, make some suggestions about what versions of the FOIMS and PROMIS systems should be compared. In a January 26, 1994 letter, INSLAW's counsel stated that it was important that "the FOIMS system that is being compared is written in the same COBOL programming language in which PROMIS is written." In a letter dated January 13, 1994 and forwarded to us along with the above-referenced correspondence, J.T. Westermeier, an expert retained by INSLAW, wrote:

> The comparison of the FOIMS and PROMIS software needs to be conducted properly. The proposed software comparison will be of very little probative value unless the comparison is made on the basis of the 1983-1984 version of FOIMS and PROMIS.

Professor Davis attempted to incorporate these suggestions into his analysis. Accordingly, he compared the code from the "Baltimore" version of PROMIS,[19] with a COBOL version of FOIMS. According to Louise Goldsworthy of the FBI's Information Resources Division, the COBOL FOIMS provided to Professor Davis was last used in either 1984 or 1985.[20]

After completing his comparison and analysis, Professor Davis summarized his findings in a letter:

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[19] The actual software which was used for the comparison is currently in use in the U.S. Attorney's Office in the Northern District of Texas. It was installed there in 1985. However, it is referred to as the "Baltimore" version as it is the same software originally installed in the District of Maryland in 1984.

[20] According to Ms. Goldsworthy, the FBI does not retain archival copies of every version of FOIMS. Because the COBOL version of the system was replaced by the NATURAL/ADABASE version during the 1980s, there are very few copies of the COBOL program still in existence.

As we discussed in your office on April 6, 1994, I have completed a thorough examination of the COBOL FOIMS code recovered from backup tape by the FBI programmers, I have compared it to the code for the "Baltimore" version of the Inslaw Promis system provided by the EOUSA, and I have examined the code for the current (Adabase [NATURAL]) version of FOIMS. I have also had ample opportunity to run both the Promis and the current FOIMS system in order to understand their capabilities, and have examined manuals for both systems.

I have reviewed a number of documents describing the background and circumstances of the case, including: the September 10, 1992, Investigative Report by the Judiciary Committee on the Inslaw Affair, Inslaw's Analysis and Rebuttal of the Bua Report, the 10 January 1993 letter and report from Dr. Dorothy Denning describing her findings, a current Promis manual, two Collections Procedure Manuals for Promis dating from 1984 (one for Southern CA, the other for Maryland), an article from Wired from 1993, a letter to you from Elliot L. Richardson, Esq., dated 26 January 1994, and the enclosure to that letter, a letter dated 13 January 1994 from J.T. Westermeier, Esq., to Mr. William Hamilton.

Based on all of this information, I am of the opinion that there is no support of any form for the allegation that either the COBOL FOIMS code or the Adabase FOIMS program were copied from or to any significant degree modeled after the Promis system. While there is some similarity in the tasks undertaken by both programs, there are only very minor functional similarities in the design of Promis and FOIMS, and the implementations of those functional similarities are entirely consistent with completely independent creation: Even where similarity in high level function appears, the actual code used to create the function in Promis and FOIMS is quite different.

Based on our investigation and the investigations of the House Judiciary Committee and the Special Counsel, we conclude there is no evidence that PROMIS has ever been used by the FBI or that FOIMS is or is based on PROMIS.[21]

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[21] INSLAW also alleges that the Drug Enforcement Agency was directed by the Attorney General in 1988 to install PROMIS. This allegation is based on statements allegedly made by Carl Jackson, a former DEA Deputy Assistant Administrator, that the Attorney General issued "non-negotiable" orders to the FBI and DEA to "chuck" their existing systems and replace them with PROMIS.

2. There Is No Credible Evidence that INSLAW's PROMIS Is in Use or Has Been in Use in Any Agency of the U.S. Government Other than the Department of Justice.

INSLAW also maintains that its PROMIS software has been used or is currently in use in a variety of U.S. government agencies outside the Department of Justice. Although the list of such agencies is constantly evolving, INSLAW's claims focus primarily on the Central Intelligence Agency, the National Security Agency and the U.S. Navy. We have carefully reviewed these allegations, interviewed individuals from each of these agencies and reviewed certain documents provided by the CIA and the Navy. We are unaware of any credible evidence that any of these organizations ever used INSLAW's PROMIS software system.

As with most of INSLAW's assertions, these claims are based almost completely on the alleged statements of anonymous sources who have refused to cooperate with our review of the Special Counsel's report.[22] However, each of these agencies has, in

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Philip Cammera, a current DEA Deputy Assistant Administrator for Information Systems, told the Special Counsel that the allegations were false and that the DEA had never used PROMIS. We attempted to interview Mr. Jackson who ultimately refused to speak to us. However, House Judiciary Committee records documenting their investigation indicate that House investigators were unable to substantiate any of Mr. Jackson's allegations through either minutes of the meetings in which the "non-negotiable" orders were allegedly discussed or through interviews with DEA computer technicians.

[22] For example, the sources for the claim that INSLAW's PROMIS is in use on U.S. nuclear submarines are "a trusted INSLAW source with close ties to the CIA," "another individual with ties to the CIA" and "a computer programmer on board a U.S. Navy nuclear submarine." INSLAW refused to identify any of these individuals. Unnamed sources also allegedly provided INSLAW with information relating to the CIA and NSA.

fact, acknowledged that they either use software systems or maintain databases that are identified by the "PROMIS" acronym. At the request of either INSLAW, individuals related to INSLAW or the House Judiciary Committee, each of these organizations has undertaken internal investigations to determine whether the "PROMIS" program or database in use within that organization is in any way related to INSLAW's PROMIS software. Each has determined that there is no connection.

The CIA uses a software system called Project Management Integrated System developed by Strategic Software Planning Corporation ("SSPC") of Cambridge, Massachusetts.[23] In response to congressional inquiries, the CIA undertook an extensive search to determine whether it had ever obtained INSLAW's PROMIS. As discussed in detail in the report of the House Judiciary Committee, it was subsequently determined that INSLAW's PROMIS had never been obtained or used by the CIA. (House Report 57-59.) We met with representatives of the CIA's General Counsel's Office and Office of Legislative Affairs who were involved in investigating the charges made by INSLAW. They detailed the breadth of the investigation undertaken by the CIA and confirmed the conclusion that INSLAW's PROMIS was never in use at the CIA. They also stated that their investigation uncovered the fact that SSPC's PROMIS system had been used at various times by two sections within the CIA. They also made

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[23] SSPC's PROMIS is also used by certain Canadian government agencies. For a more detailed discussion about SSPC and its PROMIS software, see the discussion in the following section.

their investigative files available for our review. Those files were fully consistent with the CIA's findings and indicated that an extensive effort to search for the software had been undertaken.[24]

We also met with representatives of the National Security Agency. The NSA maintains a database known as Product Management Information Systems or "PROMIS" according to Carol Fay Boomer, branch chief for the office which maintains the database, and Nancy Starecky, who participated in the original development of the database. "Product" is a term used within the NSA to refer to intelligence reports. Accordingly, the NSA "PROMIS" database contains abstracts of intelligence reports generated by various parts of the NSA. Both Ms. Starecky and Ms. Boomer emphasized that the NSA "PROMIS" is not a software program, but rather is an

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[24] In INSLAW's Addendum, INSLAW argues that the CIA has made inconsistent and contradictory statements regarding the existence of INSLAW's PROMIS software at the CIA. (INSLAW Addendum 7.) In response to an inquiry from Chairman Brooks in late 1990, E. Norbett Garrett, the CIA's Director of Congressional Affairs, wrote:

> We have checked with Agency components that track data processing procurement or that would be likely users of PROMIS, and we have been unable to find any indication that the Agency ever obtained PROMIS software. If you have some more specific information regarding this matter, we would appreciate hearing from you.

Subsequently, the CIA conducted a more thorough search at Chairman Brooks' request. That search was fully documented in the materials provided to us by the CIA. In November 1991, CIA Deputy Director Richard Kerr informed Chairman Brooks that the more extensive search again revealed that INSLAW's PROMIS had never been obtained by the CIA although the CIA had used "PROMIS" software developed by Strategic Software Planning Corporation. We disagree with INSLAW that these statements are inconsistent or evidence of dissembling by the CIA.

application of the commercially available M204 database management system. According to Ms. Starecky, M204 is one of the earlier database systems. It basically allows the user to define data fields and other information to be contained in individual databases, such as the NSA PROMIS database. Ms. Starecky stated that she was involved in the original development of the NSA PROMIS database in the 1970s which was developed primarily to allow the accumulation of management information regarding the productivity of various NSA divisions.

Finally, the U.S. Navy has also acknowledged that it uses a database with the "PROMIS" acronym. According to a letter signed by the Navy's Inspector General, Vice Admiral D. M. Bennett, an internal Navy investigation revealed that the Naval Undersea Warfare Center Division had developed in-house a database referred to as the Program Management Information System or "PROMIS." The investigation also determined that the Navy did not use INSLAW's PROMIS software and that the Navy "PROMIS" database was in no way related to INSLAW's PROMIS. We reviewed internal Navy documents regarding that investigation which were all consistent with the findings stated by Vice Admiral Bennett. In addition, we spoke with several individuals associated with the Navy including a Supervisory Electronics Engineer employed in the Logistics Support Branch at the Naval Undersea Warfare Center, Newport Division. The Supervisory Electronics Engineer told us that he has been involved with the Navy's "PROMIS" database since it was developed in the early 1980s. He stated

that the database was designed and developed in-house under his direction. The word "program" in the database's name refers to the Fleet Modernization Program. The database is used to maintain an inventory of combat systems and other equipment aboard Navy submarines and, thus, to help plan for future changes in fleet configurations. According to the Supervisory Electronics Engineer, the database is not accessible from the submarines but only from certain land bases.[25]

It should be noted that we were concerned when we learned that all three of these agencies were using databases or software programs with the same "PROMIS" acronym. However, our investigation has failed to uncover any evidence that these programs were based on or in any other way derived from INSLAW's software. When one considers the frequency with which "MIS" -- "Management Information Systems" -- is used within the computer field, the fact the databases share the "PROMIS" acronym is less remarkable than it initially appears. In light of our findings and the lack of any support for INSLAW's allegations other than the shared acronym and the alleged statements of unknown sources,

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[25] INSLAW asserts that the database is maintained on U.S. as well as British submarines and not solely on land bases. These assertions are based on unnamed sources and a 1987 contract solicitation published in the Commerce Business Daily seeking technical and engineering services for, among many other things, the Navy's "PROMIS" database. Though the synopsis of the statement of work contained in the announcement does appear to be somewhat ambiguous, INSLAW has grossly mischaracterized the announcement in its Addendum. (INSLAW Addendum 6.) Furthermore, in light of the fact the announcement states that it is seeking services to support a "land based test facility," we do not think INSLAW's charge that the Navy has made contradictory statements with regard to this database withstands any scrutiny.

we conclude that there is no credible evidence that INSLAW's PROMIS software has been obtained by the CIA, the NSA or the U.S. Navy.

E. There Is No Credible Evidence that the Department of Justice or Individuals Involved with the Department of Justice Improperly Distributed PROMIS Software to Foreign Governments or Entities.

INSLAW alleges that Department of Justice officials, working with Dr. Brian and Robert Maxwell, were involved in the international distribution of Enhanced PROMIS. According to INSLAW:

> The accounts are generally consistent about the motivations for the sales: (1) the personal financial gain of Earl Brian and colleagues; (2) the generation of extra funds for financing U.S. covert intelligence operations that the U.S. Congress has declined to finance, such as the mid-1980's covert assistance to the Contras in Nicaragua; and (3) an initiative to penetrate the secret files of foreign intelligence and law enforcement agencies by inducing them to acquire and implement the PROMIS database management software and the necessary computer hardware, after the software and hardware have been secretly modified to permit electronic eavesdropping by the U.S. National Security Agency.

(INSLAW Rebuttal 36.) INSLAW maintains the software was sold to government agencies in Israel, Canada, Jordan, Egypt, Singapore, South Africa, eastern European countries, Central American countries and elsewhere.[26]

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[26] We determined that it was unnecessary to investigate most of these allegations as they are based primarily on uncorroborated statements usually attributed to unnamed sources. In addition to foreign governments, INSLAW also asserts that PROMIS was distributed to certain international organizations, including the World Bank and the International Monetary Fund. (INSLAW Addendum 17-18.) The basis for these claims are also the alleged statements of unnamed government officials. (Reporter

The Special Counsel concluded after a preliminary investigation that additional investigation of these claims was not warranted and that it "would be an irresponsible use of the taxpayers' money to initiate this type of international fishing expedition where there is so little reason to believe that we would find evidence of a crime or other wrongdoing by the government." (Bua Report 152.) However, although it failed to uncover any direct evidence of the international distribution of PROMIS other than the testimony of Mr. Ben-Menashe and others discussed above, the House Judiciary Committee concluded that "questions remain" as to whether such distributions took place. (House Report 111.)

We have carefully reviewed INSLAW's allegations and the evidence which INSLAW claims supports them, the files of the House investigation and all other available documentation. Based on that review, we find absolutely no credible evidence that Enhanced PROMIS was distributed internationally by the Department of Justice or others associated with the Department. INSLAW's allegations are based on two basic sources: (1) the testimony of Mr. Ben-Menashe, Mr. Riconosciuto and others who, as discussed in

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Anthony Kimery also claims to have anonymous sources that confirm the World Bank uses PROMIS.) Mr. Ibrahim Shihata, Vice President and General Counsel of the World Bank, informed us that he conducted two investigations at the Bank after being informed by INSLAW's counsel of INSLAW's allegations. Both Mr. Shihata and Mr. Everardo Wessel of the Bank's Information Center informed us that they found no evidence that the Bank was using or had ever used any version of the PROMIS program.

detail above, are totally lacking in credibility,[27] and (2) the unsubstantiated conjectures and musings of INSLAW and its principals. As a result, we do not intend to recount all of the various charges made by INSLAW in this report.

However, there are three areas upon which INSLAW has focused its attention that we will address: (1) the alleged distribution of Enhanced PROMIS to Israel; (2) the alleged distribution of Enhanced PROMIS to Canada; and (3) the alleged role of the late Robert Maxwell in those efforts. Our review of those allegations leads us to conclude that there is no credible evidence supporting those claims.

1. The Alleged Distribution of Enhanced PROMIS to Israel.

INSLAW maintains that Enhanced PROMIS was provided to Israel in 1983 and that Israel later became heavily involved with U.S. intelligence agencies in the further international distribution of the software. The root of this allegation lies in the undisputed fact that the Department of Justice did, in fact, provide some version of the software to an Israeli government representative in May 1983. Justice Department officials have steadfastly maintained that the software provided to Israel was the public domain version of PROMIS (thus making it perfectly

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[27] Mr. Ben-Menashe is, according to INSLAW, the primary source for these allegations.

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proper for the U.S. government to provide such software), and documents prepared contemporaneously with the transfer to Israel reflect that fact. Nevertheless, the House Report suggests that this transfer was a cause of concern for the Committee:

> Department of Justice documents show that a "public domain" version of the PROMIS software was sent to domestic and international entities including Israel. Given the Department's position regarding its ownership of all versions of PROMIS, questions remain whether INSLAW's Enhanced PROMIS was distributed by Department officials to numerous sources outside the Department, including foreign governments.

(House Report 111.)

Our review of the prior investigations and the results of our own investigation revealed no credible evidence that the software provided to Israel in 1983 was Enhanced PROMIS and, in fact, verified that it was the public domain version of the software that was transferred. Furthermore, there is no other credible evidence of which we are aware that indicates that Enhanced PROMIS was ever provided to Israel.

There is no question that some version of PROMIS was provided to an Israeli representative in May 1983. On May 12, 1983, Jack Rugh, a Department of Justice employee involved in the administration of the PROMIS contract, forwarded a magnetic tape and supporting documentation to Madison Brewer for transmittal to Dr. Joseph Ben Orr of Israel with a memorandum providing the following:

> Enclosed are the PROMIS materials that you asked me to produce for Dr. Ben Orr of the Government of Israel. These materials consist of the LEAA DEC PDP 11/70 [public domain] version of PROMIS on magnetic tape along with the printed specifications of that tape, as well as two printed volumes

of PROMIS documentation for the LEAA version of the system.

We spoke with Dr. Ben Orr, who lives in Israel, several times by telephone. In 1983, Dr. Ben Orr was the Senior Assistant State Attorney for the Israeli Justice Ministry. He spent part of 1982 and 1983 working in the Justice Department's Office of Legal Policy as part of a new and short-lived exchange program between the U.S. Justice Department and the Israeli Justice Ministry.[28] He told us that he essentially acted as a consultant to the Department on several issues. He retired in 1989 as District Attorney for the City of Jerusalem.

Dr. Ben Orr stated that while he was at the Department of Justice he learned that the Department had decided to computerize the U.S. Attorneys' Offices. He asked to be allowed to watch the process of automating those offices as he knew that Israel was considering automating certain functions in its prosecutors' offices. As part of that effort, he travelled to several locations around the country to observe both the installation and utilization of PROMIS.

Dr. Ben Orr also stated that he set up a meeting with Mr. Hamilton at INSLAW's offices. During that meeting, Mr. Hamilton provided Dr. Ben Orr with some papers that illustrated the data

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[28] INSLAW made a Freedom of Information Act request in March 1993 for Justice Department documents relating to Dr. Ben Orr and another Israeli participant in the exchange program. The search uncovered no responsive files. We asked the Office of Information and Privacy to expand their search beyond that statutorily required in order to determine for certain whether any responsive documents existed. They still were unable to locate any documents.

compiling potential of the PROMIS software. Dr. Ben Orr said he forwarded those papers to the Israeli Justice Ministry for their review. Dr. Ben Orr said that this was the only meeting that he ever had with Mr. Hamilton and that he was the only representative from the Department of Justice or the Israeli government at the meeting. He noted that Mr. Hamilton did not demonstrate the software during the meeting.[29]

Dr. Ben Orr subsequently inquired of the Department's "computer people" whether there was any way he could get a copy of the PROMIS software for possible use in Israel. After some negotiation, the Department gave him a reel of tape with the software on it and two large files of reading material. Dr. Ben Orr said that he was assured by Department personnel that the Department owned the software that was being provided to him. He could not remember the names of the "computer people" with whom he dealt.

Dr. Ben Orr stated that when he returned to Israel he brought the software to the Justice Ministry. He said that the Ministry decided not to use the PROMIS software for two reasons: (1) the computer then in place at the Ministry was too small to use the software; and (2) the Israeli government decided that

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[29] INSLAW maintains that Rafi Eitan, an Israeli intelligence officer, actually attended the meeting with Mr. Hamilton using "Dr. Ben Orr" as an alias. Dr. Ben Orr denied this was true. He stated that he attended the meeting with Mr. Hamilton. Furthermore, he stated that he knew of Mr. Eitan through the media but had never met him personally. Finally, Dr. Ben Orr described this and other allegations made by Mr. Hamilton as "sheer lies and imagination."

they wanted to install a program developed by an Israeli company rather than a foreign firm and one that was tailored specifically to the needs of the Ministry. The entire project was put out to bid. Dr. Ben Orr stated that the Israeli government never did and does not now use any version of PROMIS.

During our interview, Dr. Ben Orr stated that he still had the magnetic tape that was provided to him by the Department of Justice in 1983. After extensive negotiations, Dr. Ben Orr agreed to deliver the tape to the security officer at the American Consulate in Jerusalem. The tape was subsequently delivered to our offices.

With the aid of Dr. Randall Davis, we reviewed the contents of the tape in order to determine whether the tape contained the public domain version of PROMIS or Enhanced Promis. In particular, we looked for evidence that the software on the tape included the three major enhancements identified by INSLAW as the constituting the difference between public domain PROMIS and Enhanced PROMIS: the Data Base Adjustment subsystem, the Batch Update subsystem and the 32-bit Architecture VAX version of PROMIS. (See In re Inslaw, 83 B.R. at 98-100, for a detailed description of the functions of these enhancements.) We also reviewed the code contained on the tape to determine the dates the various programs were developed.

Based on that review, there was no indication that the software on the tape provided by Dr. Ben Orr included any of the primary enhancements that INSLAW maintains creates Enhanced

PROMIS. Perhaps most telling, the indicated source computer and object computer for each program on the tape was the "PDP 11" computer. This is consistent with the software being the public domain version. According to INSLAW, one of the major improvements in Enhanced PROMIS was the redesign of the software to be used on 32-bit architecture VAX minicomputers. None of the code on the tape in question indicated that it was for a VAX computer. Based upon the analysis of the code, Dr. Davis concluded that the tape almost certainly contained the public domain version of the software.[30]

Nevertheless, INSLAW maintains that the software delivered to Israel in 1983 was Enhanced PROMIS and that Israeli intelligence officer Rafi Eitan, using the alias of Dr. Joseph Ben Orr, was the individual who met with Mr. Hamilton. INSLAW bases these claims on the following: the testimony of Ari Ben-Menashe, the fact that the tape was delivered in May 1983 shortly after Modification 12 was ratified, and the fact that the description provided to Mr. Hamilton by an Israeli reporter of Dr. Ben Orr does not, according to Mr. Hamilton, match the description of the individual he met with in 1983. (See INSLAW Rebuttal 38-43; INSLAW Addendum 9-12.) As discussed above, we have already concluded that the testimony of Mr. Ben-Menashe

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[30] Based on the Bankruptcy Court's opinion, it is a little difficult to understand how any program delivered to Israel in May 1983 could include the three primary enhancements which INSLAW claims are proprietary to INSLAW. According to Finding of Fact 28, the Data Base Adjustment enhancements were not even delivered to the Department of Justice until 1985. In re Inslaw, 83 B.R. at 98.

lacks credibility. Second, we do not think the fact that the software was delivered after the implementation of Modification 12 necessarily leads to the conclusion that it was Enhanced PROMIS rather than public domain PROMIS. In fact, our review of the code on the tape indicates that the tape contains only the public domain version of the software. Finally, we question the credibility of the identification by Mr. Hamilton and other INSLAW employees from "a police-style photographic lineup" of Mr. Eitan as the individual with whom he met in 1983. (INSLAW Rebuttal 40-41, INSLAW Addendum 10-11.) In light of the fact that all the other evidence indicates that Enhanced PROMIS was not delivered to Israel, the alleged identification by Mr. Hamilton of Mr. Eitan does not, in our opinion, constitute significant credible evidence that either Mr. Eitan attended the 1983 meeting as "Dr. Ben Orr" or that the Department of Justice distributed Enhanced PROMIS to Israel.[31]

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[31] As further evidence of Israel's alleged involvement in the distribution of PROMIS, INSLAW points to a passage in Mr. Ben-Menashe's book in which he claims to have seen a cable directing that $600,000 from a CIA-Israeli slush fund be transferred to Earl Brian and then to the Washington, D.C. law firm of Dickstein, Shapiro & Morin ("DSM"). (Profits of War 141.) The money was allegedly used to fund the severance package of INSLAW's counsel, Leigh Ratiner, from the firm. Mr. Ratiner allegedly had been too aggressive in challenging the Department of Justice. According to INSLAW, "In a meeting at the Justice Department on December 16, 1993, INSLAW presented a sensitive document, authored by a self-evidently credible person, offering, under appropriate circumstances, to make available evidence corroborative of significant elements of Ben-Menashe's published claims." (INSLAW Addendum 4.) The source of this corroborative evidence was Reynaldo Liboro, the former office manager at DSM. Mr. Liboro is currently serving a five-year federal prison sentence at the Federal Correctional Institution in Butner, North Carolina for bank fraud and theft. Mr. Liboro pleaded guilty in

2. The Alleged Distribution of Enhanced PROMIS to Canada.

INSLAW is critical of the Special Counsel's Report due to the Special Counsel's alleged failure to adequately investigate allegations that INSLAW's PROMIS is in use in several agencies of the Canadian government. INSLAW is particularly critical of the Special Counsel's decision not to interview former Canadian stockbroker John Belton. As discussed in Section IV(C) above, we interviewed Mr. Belton and found his information was almost completely based on statements by sources who he insisted on keeping anonymous.

Nevertheless, the decision by the House Judiciary Committee granting us access to the records of its investigation allowed us to carefully review the statements of those individuals interviewed by Committee investigators about the alleged Canadian connection. Although the House Judiciary Committee concluded that it had "been effectively thwarted in its attempts to support or reject the contention that INSLAW software was transferred to the Canadian Government" (House Report 57), we found the transcripts of the relevant interviews to be most informative.

1990 to defrauding DSM of approximately $1.3 million in a checking scam. According to the AUSA who handled the case, attorneys at DSM were aggressive in pursuing Mr. Liboro after the fraud was uncovered and Mr. Liboro had fled to the Philippines. During an interview with us, Mr. Liboro claimed to have first-hand knowledge of certain events consistent with the account provided by Mr. Ben-Menashe in his book. He also informed us that his former assistant at DSM might be able to confirm his story. We interviewed his former assistant who was unable to confirm any significant aspect of his story.

House investigators took statements from at least six current or former employees of the Canadian government, all but two of which were given under oath. All those statements were consistent.[32] In essence, these officials described the process by which two Canadian agencies, Public Works Canada and the Canadian International Development Agency, analyzed and purchased a project management software package from Strategic Software Planning Corporation, a Massachusetts based company, in the mid-1980s. The program was called Project Management Integrated System or "PROMIS". There is no evidence linking this software to INSLAW's PROMIS other than the shared acronym.

In 1991, the Canadian Workplace Automation Research Centre conducted a study to determine the then-current inventories of software packages, system development activities and hardware within the Canadian government. During that study, an error was made by a college student working on the inventory when he identified the vendor of the "PROMIS" software in use at the Canadian agencies as INSLAW rather than Strategic Software Planning Corporation. The student had been told that the software was called "PROMIS" and was tasked the responsibility of determining the vendor. He mistakenly concluded the vendor was INSLAW after a brief search of public records. A subsequent telephone call to INSLAW by that student seeking additional

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[32] The witnesses included two employees of the Canadian International Development Agency; one employee of Public Works Canada; a former contractor of the Canadian Workplace Automation Research Centre; and one current employee and one former intern of the Canadian Workplace Automation Research Centre.

information about PROMIS as part of the study led to the allegations that INSLAW's PROMIS had been distributed to Canada. However, there is nothing in the testimony of any of these witnesses which supports such an hypothesis.

Furthermore, Committee investigators also took a sworn statement from Massimo Grimaldi, president of Strategic Software Planning Corporation. As reflected in the House Judiciary Committee report, Mr. Grimaldi confirmed in that statement that his company had sold copies of its "PROMIS" software to Public Works Canada and CIDA. According to Mr. Grimaldi, the software was originally designed to perform scheduling, resource management and cost control functions on construction projects although its applications have become more generalized over the years.[33]

In conclusion, all of the available evidence indicates that the "PROMIS" program in use by certain Canadian agencies is not a version of INSLAW's PROMIS but rather a totally different program developed by a different company.

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[33] Two other aspects of Mr. Grimaldi's statement are noteworthy. First, Mr. Grimaldi stated that his company tried to file for a Canadian trademark for "PROMIS" but discovered that there was another company (not INSLAW) that was already marketing a manufacturing system called "PROMIS." Accordingly, his company marketed its product as "SSP's PROMIS" or "PROMIS by Strategic Software Planning Corporation" in Canada. Second, the transcript reflects that Mr. Grimaldi provided a copy of SSPC's PROMIS to House Committee investigators during the interview. During our review of Committee files, we were unable to locate the copy of the software or any documents describing any analysis of that software.

3. The Alleged Involvement of Robert Maxwell in the International Distribution of PROMIS.

In the Addendum submitted to the Attorney General by INSLAW in February 1994, INSLAW maintains that the late British publisher Robert Maxwell played a critical role in the alleged international distribution of PROMIS by Israel and the United States. (INSLAW Addendum 12-14.) According to INSLAW, Robert Maxwell was used as a "cutout" by Israeli intelligence. (Id. 4.) Furthermore, INSLAW maintains that "Maxwell's role as a cutout for a foreign nation's sale of computer software has been implicitly acknowledged by the actions of the FBI." (Id.) There is simply no evidence -- again, other than the statements by Mr. Ben-Menashe -- of any involvement of Mr. Maxwell in the sale or distribution of PROMIS.

The reference in INSLAW's Addendum to the implicit acknowledgement by the FBI of Mr. Maxwell's role in the dissemination of PROMIS and as a "cutout" for Israeli intelligence agencies apparently relates to the production of documents by the FBI pursuant to a FOIA request made by INSLAW in 1993. On January 10, 1994, the FBI produced 20 pages of FBI documents in response to INSLAW's request for all documents relating to the "involvement of the late Robert Maxwell in the dissemination, marketing or sale of computer software systems, including but not limited to the PROMIS computer software product, between 1983 and 1992." (Emphasis added.) The FBI redacted portions of those documents prior to their distribution to INSLAW. Based on INSLAW's analysis of certain unredacted

codes on those documents, INSLAW concluded that the Albuquerque, New Mexico office of the FBI conducted a "foreign counterintelligence investigation" of Mr. Maxwell and one of his corporations. (Id. 13.)

From this conclusion, INSLAW made a remarkable leap upon which it has based its Maxwell-related allegations:

> Why would the FBI conduct a foreign counterintelligence investigation of Robert Maxwell for selling computer software in New Mexico in 1984? It is reasonable to infer that the FBI office in Albuquerque opened a foreign counterintelligence investigation of Maxwell and Pergamon International because Maxwell sold PROMIS to one or more U.S. defense installations in New Mexico and because the FBI may have been concerned that a foreign nation [i.e. Israel] intended to use the PROMIS software as an electronic Trojan horse for penetrating the computerized database(s) of the targeted defense installation(s).

Id.

We disagree that such an inference is reasonable. There is no evidence supporting this flight of fancy by INSLAW. While we do not intend to comment on the accuracy of INSLAW's analysis of certain codes on the documents provided to INSLAW, we do note that none of the documents in question even mentioned INSLAW or PROMIS. The FBI made unredacted versions of the documents available to us for our review. None of the documents referred to INSLAW or PROMIS or to any other subject even remotely related to INSLAW's allegations. In short, there is nothing of which we are aware that links Mr. Maxwell to PROMIS.

F. There Is No Evidence that the Department of Justice's Office of Special Investigations Is a "Front" for the Department's Own Covert Intelligence Agency.

In the Addendum to INSLAW's Rebuttal submitted by INSLAW on February 14, 1994, INSLAW for the first time alleged that the Department's Office of Special Investigations ("OSI") was at the center of the various conspiracies which INSLAW claims exist. These remarkable -- and wholly unsubstantiated -- charges are summarized in the introduction to the Addendum:

> One of the organizational units that reports to Mark Richard is the Office of Special Investigations (OSI). OSI's publicly-declared mission is to locate and deport Nazi war criminals. The Nazi war criminal program is, however, a front for the Justice Department's own covert intelligence service, according to disclosures recently made to INSLAW by several senior Justice Department career officials.
>
> One undeclared mission of this covert intelligence service has been the illegal dissemination of the proprietary version of PROMIS, according to information from reliable sources with ties to the U.S. intelligence community. INSLAW has, moreover, obtained a copy of a 27-page Justice Department computer printout, labelled "Criminal Division Vendor List." That list is actually a list of the commercial organizations and individuals who serve as "cutouts" for this secret Justice Department intelligence agency, according to intelligence community informants and a preliminary analysis of the computerized list...
>
> According to written statements of which INSLAW has obtained copies, another undeclared mission of the Justice Department's covert agents was to insure that investigative journalist Danny Casolaro remained silent about the role of the Justice Department in the INSLAW scandal by murdering him in West Virginia in August 1991.

(INSLAW Addendum 6.) These allegations were repeated in an INSLAW press release of approximately the same date.

These charges are fantasy. There is no corroborative evidence that is even marginally credible. Rather, INSLAW finds

it sufficient simply to rely on unnamed "reliable sources" and anonymous "senior Justice Department career officials." Not surprisingly, none of those individuals has come forward to be interviewed. Considering the outrageous nature of these charges and the absolute lack of evidence to support them, it is difficult not to question the motivations of INSLAW in asserting them.

Nevertheless, we attempted to investigate these claims. Accordingly, we interviewed Deputy Assistant Attorney General Mark Richard, the individual INSLAW suggests oversees the covert operations of OSI. Mr. Richard stated that INSLAW's charges are ridiculous. He said that OSI is only involved in its stated mission of locating and deporting Nazi war criminals and in related projects such as the analysis of Kurt Waldheim's role during World War II. He did, however, note that OSI does work with various intelligence agencies in fulfilling its mandate of locating war criminals. He categorically denied any involvement by OSI in covert operations, the dissemination of PROMIS or the death of Mr. Casolaro. He said that he considers these and other allegations made by INSLAW to be slanderous.

We should also note that during our tenure at the Department we have not become aware of OSI engaging in any of the types of activities alleged by INSLAW.

With regard to the vendor list that INSLAW alleges lists those companies that serve as "cutouts" for the Department's covert intelligence activities, INSLAW relies for this assertion

on two "usually reliable informants." (INSLAW Addendum 23.) We showed the list to Robert Bratt, Executive Officer for the Justice Department's Criminal Division. Mr. Bratt said the list is exactly what it purports to be: a list of vendors used by the Criminal Division. According to Mr. Bratt, the Criminal Division has been using an automated system called PROCURE for requesting goods and services from the Justice Department's administrative offices since the beginning of the 1993 fiscal year. The main suppliers to the Division are maintained on a master list and given codes so that orders may be placed more quickly simply by inputting the vendor code. When the code is entered, the PROCURE system automatically pulls up the address, telephone number, contact person and other relevant data. Mr. Bratt stated that the list provided to us by INSLAW was simply a copy of the master list of Criminal Division vendors.

We asked Mr. Bratt to print a current version of the vendor list. He did so, and it was in the same format as the list provided to us by INSLAW. Furthermore, it appears that, although the list generated by Mr. Bratt was longer, all the vendors included in the list provided to us by INSLAW were also on Mr. Bratt's list.

We have no reason to believe that the vendor list is anything other than what it purports to be and what Mr. Bratt identified it as. Conversely, according to INSLAW's theory, many of the largest companies in the world (including AT&T, Canon, IBM and Xerox) are fronts for OSI's covert operations. There is

nothing to suggest this is true.

The "support" for INSLAW's allegation that OSI was involved in the death of Mr. Casolaro is equally absurd. INSLAW relies on a series of typed questions and answers that were allegedly prepared by an unnamed senior CIA official and faxed to "an individual who has stated under oath that he has served as an operative on national security issues for various agencies of the U.S. Government" who transmitted the questions and answers to a San Francisco journalist. (INSLAW Addendum 24-25.) Those questions and answers attribute to the unnamed CIA source the assertion that Mr. Casolaro was "murdered by agents of the Justice Department." (Id. at 25.) No matter how these charges may be presented, they are in essence allegations of an unnamed source without any corroborating evidence. As discussed in Section V below, we found no credible evidence that Mr. Casolaro's death was anything other than a suicide.

In conclusion, these newly articulated charges are totally devoid of substantiation and appear to have been either recently created by INSLAW or repeated by INSLAW without any regard to the truth.

G. There Is No Credible Evidence that INSLAW-Related Documents Were Improperly Destroyed by the Justice Department Command Center.

INSLAW alleges that Garnett Taylor, a former Department of Justice employee, and others associated with the Department of Justice Command Center destroyed "classified national

security/intelligence documents" related to INSLAW. INSLAW insinuates that the alleged destruction took place in order to keep embarrassing documents from being revealed. The Special Counsel was unable to uncover any evidence that any such destruction took place. (Bua Report 109-113.) We too were unable to find any evidence that any documents relating to INSLAW were destroyed by Mr. Taylor or other Command Center personnel.

In its various papers, INSLAW has identified several sources as allegedly providing INSLAW with information linking Mr. Taylor to the destruction of INSLAW documents. In Exhibit B to the INSLAW Rebuttal, INSLAW asserts that two career DOJ employees -- who insist on anonymity -- have confided to INSLAW information related to the improper destruction of documents. The first, "Witness #7," allegedly claims to have witnessed admissions about the destruction of documents by Mr. Taylor. "Witness #11" allegedly saw Mr. Taylor and his supervisor, James Walker, remove classified documents from the Civil Division for destruction. In addition, Mr. Hamilton claimed in his 1989 affidavit that Ronald LeGrand's confidential source "believes that documents relating to Project Eagle were shredded inside DOJ."

None of these allegations have been corroborated.

Mr. Walker informed the Special Counsel that there were no INSLAW or PROMIS documents maintained in the DOJ Security Department and that to

his knowledge there were never any INSLAW documents in any of the safes he controlled or knew about.

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FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

In its Rebuttal, INSLAW argues that the testimonies of Messrs. Taylor and Walker are inconsistent and faults the Special Counsel for accepting the unsworn statement of Mr. Walker over the grand jury testimony of Mr. Taylor. This position is based on INSLAW's assumption (pursuant to FRCP 6(e), INSLAW was not provided access to grand jury testimony) that Mr. Taylor testified to the grand jury that "Walker had instructed Taylor to receive classified intelligence/national security documents relating to the INSLAW case from the files of a Civil Division attorney who had left DOJ, and then to destroy those documents." (INSLAW Rebuttal 46.)

based on first-hand knowledge Mr. Taylor acquired while employed in one of the Department's Sensitive Compartmented Information Facilities (SCIFs). Subsequent to his appearance before Judge Bua's federal grand jury in Chicago, Mr. Taylor told the Hamiltons that the one provable felony committed in the INSLAW affair is the destruction of documentary evidence by the Department regarding INSLAW and PROMIS. Mr. Taylor further told the Hamiltons that the lawyer who represented Mr. Taylor in the Bua investigation told Mr. Taylor that the Bua investigation was proceeding in such a way as to deliberately avoid the discovery of the truth.

We, of course, have no direct knowledge as to what Mr. Taylor told the Hamiltons

36 CFR 1256.50 - Statutory Restrictions
FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Furthermore, we interviewed Mr. Taylor about these alleged comments. Mr. Taylor admitted to speaking with the Hamiltons on several occasions but stated that he never told the Hamiltons that the "one provable felony committed in the INSLAW affair" involved the destruction of documents. Rather, he told us that he informed Mr. Hamilton in one of those conversations that there was nothing provable regarding the destruction of documents.

Mr. Taylor did, however, state that he told the Hamiltons that he believes there may have been a felony committed relating to the destruction of INSLAW documents. He said his belief is based on media reports and on his understanding of the conclusions reached by the House Judiciary Committee. Mr. Taylor stated that he has no first-hand knowledge that any INSLAW-related documents were destroyed by the Department's security staff or others. He also stated that he has no reason to believe

that Mr. Walker ever destroyed any documents related to INSLAW or to PROMIS.

Mr. Taylor also told us that his attorney, Susan Bogart, never said that the Special Counsel's investigation was proceeding in such a way as to deliberately avoid the discovery of the truth or anything to that effect. Mr. Taylor denied telling either of the Hamiltons that Ms. Bogart had made any such statements. However, he did tell the Hamiltons that he felt the Special Counsel's investigation was taking a long time and that he did not feel investigators asked him very penetrating questions.[34]

Further, Ronald LeGrand's confidential source also failed to support INSLAW's allegations. As set forth in more detail in Section IV(B) above, we interviewed LeGrand's Source in some detail. During that interview, LeGrand's Source stated that he had no information regarding the destruction of any documents and that he never indicated otherwise to Mr. LeGrand.

And finally, the anonymous sources that INSLAW and its principals claim have critical information concerning the destruction of documents never came forward to cooperate with our efforts. As discussed in Section IV(A) above, we attempted to

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[34] Based on our review of the grand jury transcripts and other memoranda regarding interviews of Mr. Taylor, we disagree with Mr. Taylor's assessment of the quality of the Special Counsel's investigation. In addition, Mr. Taylor acknowledged to us that he is suing the Department of Justice through the Merit System Protection Board seeking reinstatement of his job. Mr. Taylor maintains that he was dismissed in retaliation for his decision to volunteer for service in the Desert Storm military operation.

provide adequate assurances to these individuals through INSLAW and its counsel. Nevertheless, neither these nor any of INSLAW's other anonymous sources agreed to be interviewed by us.

H. There Is Insufficient Evidence To Support INSLAW's Allegation that Department of Justice Employees Conspired to Improperly Convert INSLAW's Bankruptcy Case.

Of all the allegations made by INSLAW, the allegations that Department of Justice employees improperly attempted to convert INSLAW's Chapter 11 reorganization proceeding to a Chapter 7 liquidation and that those employees subsequently committed perjury in order to cover-up their misdeeds are the most troubling. Unlike virtually all of INSLAW's other allegations, these allegations find some credible support in the testimony of some witnesses and in some, albeit ambiguous, contemporaneous notes. After exhaustively identifying and analyzing all of the relevant evidence (Bua Report 190-231), the Special Counsel concluded, "Although the matter is not free from doubt, we conclude that there is insufficient evidence to support a finding that DOJ planned or attempted to convert INSLAW's bankruptcy case or engaged in any cover-up to conceal the conduct alleged." (Id. 190.)

Based on our review of the Special Counsel's Report, INSLAW's Rebuttal and other analyses of these allegations, we concur with the Special Counsel. Although we are troubled by the recantation of testimony by two key witnesses, we believe that the weight of the evidence supports the conclusion that there was

no effort improperly to convert INSLAW's bankruptcy proceedings. Furthermore, we see no reason to overturn the decisions of the Office of Professional Responsibility and the Public Integrity Section on this matter.

The facts surrounding these allegations are cumbersome and, at times, confusing. The Special Counsel used 41 pages to address and analyze those facts and to describe the various investigations that have been undertaken as a result of these allegations. We do not intend to restate that which is already succinctly set forth in the Special Counsel's report, especially in light of the fact that the basic facts have not changed since 1987. We do note, however, that we believe the Special Counsel's analysis is well reasoned and is fully consistent with the underlying facts.

Furthermore, we wish to identify two factors that, in addition to the analysis set forth in the Special Counsel's report, were important to our conclusion.

(1) There is absolutely no evidence that any Justice Department official ever actually attempted to convert INSLAW's bankruptcy to a Chapter 7 liquidation during the time frame alleged by INSLAW.[35] It is important to note that the United States Trustee does not have the authority to convert a

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[35] A motion to convert INSLAW's bankruptcy proceeding to a Chapter 7 proceeding was filed on September 9, 1987, pursuant to a routine Internal Revenue Service request based on INSLAW's failure to pay federal taxes. See 11 U.S.C. § 1112. This was well after the alleged effort in 1985 to convert the proceeding which is the focus of INSLAW's allegations and after those allegations were litigated before the Bankruptcy Court.

bankruptcy proceeding; rather, he or she merely has the authority to petition the Bankruptcy Court to do so. However, it is undisputed that no such petition was ever made prior to 1987. Thus, if any effort to improperly convert INSLAW's bankruptcy was made, it proceeded only to the point that pressure to do so was brought to bear and fizzled before any step actually intended to effectuate that plan was taken.

This point is important for several reasons. First, even if the weight of the evidence supported INSLAW's allegation that Justice Department officials attempted to convert the bankruptcy proceeding (which it does not), it is clear that INSLAW was not in any way harmed by that effort. INSLAW did not even begin to allege that such an effort took place until after the Hamiltons had breakfast with Anthony Pasciuto in 1987, two years after the alleged conduct took place. There is no evidence, and none is alleged to exist by INSLAW, that INSLAW was hindered by these alleged efforts or that the bankruptcy proceedings before Judge Bason were prejudiced against INSLAW in any way as a result.

Second, the fact that no conversion motion was ever filed during that period seems to indicate, we think, either that no such efforts ever actually took place or that the system actually worked quite well on behalf of INSLAW. The process of filing a motion to convert a Chapter 11 proceeding to a Chapter 7 liquidation is a simple and routine matter. If a conspiracy existed involving high-level Department officials of the type described by INSLAW, it is difficult to believe that the

conspiracy would not be able to cause such a motion to be filed. The fact no motion was filed, therefore, seems to be more consistent with a scenario in which no such conspiracy existed.

Conversely, if there were improper efforts to convert the proceeding and those efforts failed, it seems to be an indication not that INSLAW's proceedings were unfairly prejudiced by activities undertaken by Department of Justice officials with improper motives, but that INSLAW was actually protected from such improper influences. There is no question that it would be inappropriate (and perhaps illegal) for a Department of Justice official to seek a bankruptcy conversion in order, on the relatively benign side, to further his or her own career (as the Senate Staff concluded Thomas Stanton, the Director of the Executive Office of U.S. Trustees, may have done) or, on the more fantastic side, to further a conspiracy to destroy a company and steal its most important asset. The fact that such efforts failed to result in even the filing of a motion indicates that, to the extent these pressures existed, the United States Trustee was able to insulate and protect the bankruptcy system, in general, and INSLAW, in particular, from them.[36]

(2) There is no direct evidence that anyone from the Department of Justice requested or pressured Mr. Stanton to

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[36] According to INSLAW, EOUST Director Stanton sought to reassign Harry Jones, an experienced bankruptcy attorney, from the U.S. Trustee's office in New York to the U.S. Trustee's office in Washington, D.C., in order to cause the conversion. Not only was no motion ever filed, Mr. Jones was never transferred to Washington. In fact, Mr. Jones testified that he was never even asked to move to Washington on detail.

convert the INSLAW proceeding. Everyone involved directly with the alleged efforts -- Mr. Stanton, Jack Rugh, former U.S. Trustee William White, Assistant U.S. Trustee Harry Jones -- deny that any such pressure was applied. There is no proof whatsoever that any senior Department of Justice official ever pressured Mr. Stanton.

Furthermore, the testimony of Judge Cornelius Blackshear that Mr. White had told him that Mr. Stanton had pressured him to convert INSLAW's bankruptcy was subsequently recanted by Judge Blackshear. Although the circumstances surrounding that recantation raise numerous questions, it is clear that, at the very least, Judge Blackshear's original testimony is called into considerable doubt. Furthermore, unlike the case with Anthony Pasciuto's change in testimony,[37] it is unclear what motive Judge Blackshear would have for changing his testimony. At the time he changed his testimony, he had already become a bankruptcy judge. Given his plausible explanation for the recantation, and the absence of any compelling evidence to the contrary, we believe that the benefit of the doubt must go in favor of Judge Blackshear.

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[37] Mr. Pasciuto testified before Judge Bason that he did not recall telling the Hamiltons that EOUST Director Thomas Stanton had pressured the regional U.S. Trustee to convert the INSLAW case as claimed by the Hamiltons. He further testified that he had no personal knowledge of any effort to convert the bankruptcy and, if he had claimed any to the Hamiltons, he did so in order to hurt Mr. Stanton. Following a recommendation by the Office of Professional Responsibility that he be fired, Mr. Pasciuto recanted his testimony and claimed that everything he had told the Hamiltons was true and that Mr. Stanton had, in fact, pressured the regional U.S. Trustee.

I. There Is No Credible Evidence that the Department of Justice Obstructed the Reappointment of Bankruptcy Judge George Bason.

George Bason was appointed to serve as the United States bankruptcy judge in the District of Columbia on February 8, 1984 following the retirement of Judge Roger Whelan. His term expired on February 8, 1988. Although Judge Bason sought reappointment to a 14 year term, the Merit Selection Panel, chaired by U.S. District Court Judge Norma Holloway Johnson, identified another attorney as its top choice for the position on November 24, 1987. On December 15, 1987, the Judicial Council recommended the top three names on the Merit Selection Panel's list to the U.S. Court of Appeals for the District of Columbia Circuit. The Court of Appeals selected Martin S. Teel, a Justice Department attorney, for the position on December 21, 1987, thus foregoing the reappointment of Judge Bason.

Shortly thereafter, Judge Bason began to allege that the Justice Department improperly influenced the selection process and, ultimately, blocked his reappointment in retaliation for his September 1987 oral ruling in the INSLAW case. Judge Bason and INSLAW maintain that proof that the selection process was unfairly influenced by the Department can be found in the following facts, among others: Judge Johnson once shared an office with Deputy Assistant Attorney General Stuart Schiffer; Judge Bason's administrative skills and record were unfairly criticized; one of Mr. Hamilton's children allegedly overheard a Department attorney state in early 1987 that "We've got to get

rid of this judge"; and the Justice Department sought Judge Bason's recusal from the case in January 1988 (after Judge Bason had written to then Chief Judge Patricia Wald of the U.S. Court of Appeals for the D.C. Circuit suggesting the Department had improperly influenced the process). These allegations have been fueled by Mr. Hamilton's claim that a "senior U.S. government official" who demands anonymity told him that he knows of the involvement of certain officials in denying Judge Bason's reappointment.

Following an extensive review of the allegations made by Judge Bason and Mr. Hamilton regarding the selection process (see Bua Report 153-189), the Special Counsel concluded that "the great weight of the evidence clearly supports the conclusion that there was no attempt by DOJ to obstruct Judge Bason's reappointment." (Id. 188-189.) The Special Counsel also pointed out that two highly respected federal judges at the center of the selection process and the decision not to reappoint Judge Bason -- Judge Wald and Judge Johnson -- unequivocally deny that the Justice Department obstructed or attempted to obstruct the reappointment of Judge Bason. (Id. 188.)

The Senate staff reached a similar conclusion: "The Staff found no proof that the Department of Justice attempted to influence the selection process so as to deny Judge Bason reappointment." (Senate Staff Report 57.) The report of the House Judiciary Committee did not state any conclusion on this subject. However, the Committee did state that it "could not substantiate

Judge Bason's allegations." (House Report 103.)

We carefully reviewed the criticisms of the Special Counsel's Report contained in INSLAW's Rebuttal on the reappointment issue. (See INSLAW Rebuttal 72-80.) We found those comments to be rambling and incoherent. The criticisms are nothing more than innuendo and conjecture, often merely the repetition of suggestions of impropriety that were addressed and rejected in the Special Counsel's Report. They are not persuasive.

There is, however, one issue raised by INSLAW that warrants some comment. INSLAW notes that Judge Johnson apparently told Senate investigators that she "had no contacts with DOJ regarding Judge Bason" during the selection process and that she subsequently informed the Special Counsel that she recalled receiving a transcript of Judge Bason's oral ruling in the INSLAW proceeding from Judge Royce Lamberth, who at the time was the Chief of the Civil Division for the U.S. Attorney's Office for the District of Columbia. Judge Johnson initially failed to recall the contact with Judge Lamberth in discussions with the Special Counsel as well:

> Judge Johnson initially recalled to us that it was one of the district judges who recommended that she obtain a copy of the transcript of Judge Bason's oral ruling in Inslaw. Because information presented to the Panel was viewed as confidential, Judge Johnson initially declined to disclose the judge who directed her to the Inslaw ruling without first consulting that person. Upon contacting the judge who she believed provided the information, she discovered that she had been mistaken. It was not that judge who directed her to Bason's ruling; it was District Court Judge Royce Lambreth [sic].

(Bua Report 156-157.) Although it appears that at the time Judge Lamberth brought the September 28, 1987 INSLAW ruling to Judge Johnson's attention he was still employed at the U.S. Attorney's Office, he had, in fact, already been nominated to the federal bench and was sworn in shortly thereafter, on November 16, 1987. We do not believe that Judge Johnson's credibility is called into any doubt as suggested by INSLAW as a result of these events.

After carefully reviewing the records maintained by both the Special Counsel and the House Committee and INSLAW's comments, we concur with the opinion of the Special Counsel that there is no evidence of any effort by the Justice Department to improperly influence the bankruptcy judge selection process.

J. Conclusion

After spending considerable time and resources reviewing the allegations made by INSLAW and its principals concerning a far flung conspiracy by Department of Justice officials and others to steal their software in order to distribute it throughout the U.S. government and around the world, we are struck by one major observation: the lack of any credible evidence to support those charges. It has been over 12 years since the Department of Justice and INSLAW first entered into a contract for the installation of PROMIS in the various U.S. Attorneys' offices, and still we are unaware of any facts that would lead us to believe any significant part of INSLAW's various conspiracy theories.

INSLAW has relied on three principal sources of information (along with a significant amount of totally unfounded conjecture, speculation, and perhaps imagination) to fuel its fight against the United States government. First, it has repeatedly referred to the testimony of anonymous sources, all of whom are invariably described as "reliable," who refuse to cooperate with our investigation for fear of reprisal. Despite assurances from the Attorney General communicated to INSLAW's counsel, none of these alleged individuals came forward during our review. Nevertheless, to the extent we felt it was warranted, we attempted to verify the alleged claims of these anonymous sources. Those efforts revealed that virtually none of what these alleged sources claimed could be verified. As a result, we conclude that either these sources do not exist, they lack any first-hand knowledge of the facts to which they allegedly testified or INSLAW has inaccurately characterized the information which they possess.

Second, INSLAW relies on the testimony of a few patently untrustworthy individuals. The basis for INSLAW's conspiracy claims rests with the stories of Ari Ben-Menashe and Michael Riconosciuto. It is difficult to imagine a less credible pair. Two separate congressional investigations found Ben-Menashe to lack credibility.

[redacted] Mr. Riconosciuto is no more deserving of our trust. The federal judge who sentenced him to 30 years in prison on a drug conviction remarked on his inability to separate fact from fiction. These individuals are so lacking in credibility and their charges have received so little corroboration, it is difficult to believe that INSLAW's principals truly believe their tales.

And third, INSLAW has identified a very small number of additional individuals who have no direct evidence of any conspiracy but purportedly are privy to circumstantial evidence of the same. Though these individuals do not suffer from the same credibility problems of Mr. Riconosciuto and Mr. Ben-Menashe, it is remarkable that virtually every one of them has a clear and undeniable personal agenda. For example, Margaret Weincek has a suit pending against Dr. Earl Brian and his companies alleging wrongful discharge; John Belton, the former Canadian stockbroker, has spent much of the past decade suing his former employer and Dr. Brian, alleging constructive dismissal and conspiracy to commit stock fraud; and Reynaldo Liboro, the former office manager for INSLAW's bankruptcy counsel who claims that firm was involved in a conspiracy to drive INSLAW out of business, is currently serving a five-year sentence for embezzling funds from that very firm. Although we did not try to verify all of the claims made by these individuals, we were unable to verify those that we did investigate.

In contrast, INSLAW's charges have been categorically denied by everyone that was allegedly involved in the various conspiracies. We are mindful of the fact that we would expect conspirators to deny their involvement in an illegal conspiracy. However, we do not accept INSLAW's basic premise that the denial of involvement in a conspiracy following unsubstantiated charges that such a conspiracy exists is proof of both the conspiracy and that individual's involvement. After 12 years, it is time to put an end to the bizarre logic -- a sort of strange Orwellian version of Lewis Carroll reasoning -- that has given life to these charges for so long.

INSLAW has provided us with no credible direct evidence of a conspiracy of the type that they allege. Nor is there any significant documentary evidence of such a conspiracy. Finally, nearly all of the circumstantial evidence which INSLAW puts forward withers under scrutiny.

If, on the other hand, one were to accept <u>all</u> of INSLAW's conspiracy charges, then one would have to believe that all of the following individuals, along with many others, committed perjury in sworn statements, lied to federal or Congressional investigators or, in a few cases, were unwitting pawns in the perpetuation of the conspiracy:

Judge Patricia Wald of the United States Court of Appeals for the District of Columbia Circuit

District Judge Norma Holloway Johnson

District Judge D. Lowell Jensen

Vice Admiral D. M. Bennett, U.S. Navy Inspector General

Deputy Assistant Attorney General Mark Richard

Deputy Assistant Attorney General Janis Sposato

Deputy Assistant Attorney General John Keeney

Deputy Assistant Attorney General Stuart Schiffer

Deputy Assistant Director for the FBI's Technical Services Division Kier T. Boyd

Department of the Interior Administrative Law Judge James L. Byrnes

Former Acting FBI Director John Otto

Former CIA Deputy Director Richard Kerr

Former Deputy Assistant Attorney General James Knapp

Former Indio, California Police Chief Sam Cross

Former Jerusalem District Attorney Joseph Ben Orr

Professor Dorothy Denning

Professor Randall Davis

James Johnston

Phillip White

Gordon Zacrep

Louise Goldsworthy

Philip Cammera

Sandra Spooner

Dominic Laiti

Paul Wormeli

Marilyn Titus

Marilyn Jacobs

Jonathan Ben Cnaan

Daniel Tessler

Richard D'Amore

Patricia Cloherty

James Walker

Floyd Bankson

We have no reason to question the truthfulness of the individuals included in the above list. It should also be noted that the list is not exclusive, there are many other credible individuals who have denied various of INSLAW's allegations.

V. The Weight of the Evidence Indicates that J. Daniel Casolaro Committed Suicide[38]

Joseph Daniel ("Danny") Casolaro was a free-lance writer who had been working on a story involving alleged links between various Washington "scandals" of the 1980s, including INSLAW, the Bank of Credit and Commerce International (BCCI), the October Surprise, the Iran-Contra affair, the Iraqi arms procurement network, and the collapse of the savings and loan industry. Mr. Casolaro's theory was that these scandals had all been the handiwork of a shadowy group of people whom he referred to as the "Octopus." Casolaro began working on the story full-time in mid-1990.

[38] We are aware of the pain and suffering the family and friends of a suicide victim must experience. While we are obligated to revisit the difficult circumstances surrounding Mr. Casolaro's death as the result of the controversy involving INSLAW's relationship to the Department of Justice, we sincerely regret any additional pain this review may cause his family.

On Saturday, August 10, 1991, Mr. Casolaro was found dead in room 517 of the Sheraton Inn located in Martinsburg, West Virginia. His body was in the bathtub, and both of his wrists had been slashed. After a brief investigation at the scene, the local police department and the county coroner concluded that the cause of death was suicide. The coroner released the body to a local funeral home, where the body was embalmed. The Martinsburg Police Department sent a teletype to the Fairfax County Police Department in Northern Virginia requesting that Mr. Casolaro's relatives be notified of his death.

Mr. Casolaro's relatives, however, were not notified until Monday morning, August 12, 1991. His brother, a Fairfax County physician, told the Martinsburg police at that time about Mr. Casolaro's work on the "Octopus" story and suggested that many people would have had a motive to kill him. He explained that Mr. Casolaro had told people he was travelling to Martinsburg to meet a key source. He also insisted that an autopsy be conducted and questioned how Mr. Casolaro's body could have been embalmed so quickly, without either the knowledge or consent of Mr. Casolaro's family. Soon after the call from Mr. Casolaro's brother, the Martinsburg Police Department was deluged with inquiries from the news media, from friends of Mr. Casolaro and from congressional investigators. A series of questions were raised about the cause and circumstances of Mr. Casolaro's death.

Faced with this sudden and intense public interest in the case, the West Virginia authorities ordered an autopsy. The West

Virginia Deputy Chief Medical Examiner performed the autopsy on August 13-14, 1991, and determined the cause of death as suicide. The autopsy also disclosed that Mr. Casolaro had been suffering from multiple sclerosis and arteriosclerosis. The autopsy found no evidence suggesting that he had been murdered.

The autopsy findings, however, did little to quell the controversy over Casolaro's death. The media and others raised many questions about the circumstances of his death and the adequacy of both the police investigation and the autopsy. Many suggested that Mr. Casolaro had been murdered because he was about to expose the "truth" about the "Octopus." Various theories appeared in the media about "who killed Danny Casolaro."

Faced with these continuing questions about its investigation, the Martinsburg Police Department reopened the case and conducted a second, more intensive investigation. On January 25, 1992, West Virginia authorities announced that their additional investigation had led to the conclusion that Mr. Casolaro indeed had committed suicide, and that the case was closed.

Rumors and speculation continued to circulate despite the conclusions reached by the Martinsburg police. On September 10, 1992, the House Judiciary Committee issued its report on the INSLAW affair. The report raised many questions about the circumstances of Mr. Casolaro's death and recommended the appointment of an Independent Counsel to investigate six specific issues involving INSLAW, including "the lingering doubts over

certain suspicious circumstances surrounding the death of Daniel Casolaro."

After reviewing the Martinsburg Police Department's investigation of Mr. Casolaro's death, the Special Counsel concluded that there was no basis for challenging the conclusion that he had committed suicide. (Bua Report 246-250.) In its rebuttal, INSLAW was highly critical of the Special Counsel's review of this matter and was particularly critical of the Special Counsel's failure to interview certain witnesses.

In light of the intense media focus and the concerns raised by the House Judiciary Committee, we undertook a substantial review and investigation of the circumstances surrounding Mr. Casolaro's death. Based on that review and investigation, we conclude that Mr. Casolaro committed suicide.

A. Scope of Review

Our review consisted of two phases. During the first phase, we reviewed in detail the West Virginia investigations into Mr. Casolaro's death. We reviewed all the police reports and the autopsy report as well as the documents generated during an unsuccessful lawsuit the Casolaro family filed against the coroner and the funeral home regarding the embalming of Casolaro's body. Included among those documents were the sworn depositions, taken by the Casolaro family's attorneys, of the coroner and funeral home personnel. We also interviewed the police officers involved in the investigation of Mr. Casolaro's

death as well as the Deputy Chief Medical Examiner who had conducted the autopsy.

During the second phase of the review, we pursued various questions that had been raised in the media and in the House Judiciary Committee Report and attempted to answer other questions raised by Casolaro's family. During this phase, we conducted numerous interviews of Casolaro's friends, family and associates in Virginia, West Virginia, Washington, D.C., Maryland and California. We obtained documents from various sources throughout the United States, including many of Mr. Casolaro's personal papers on file at the Investigative Reporters' and Editors' Association at the University of Missouri.

We also obtained much of the physical evidence originally found in the hotel room and elsewhere and had the FBI laboratory conduct additional tests on some of that evidence. We examined Mr. Casolaro's background and had the FBI's Behavioral Sciences Unit at the FBI Academy in Quantico, Virginia conduct an equivocal death analysis, or "psychological autopsy." Other experts were consulted as well, including a former President of the National Academy of Forensic Sciences and a George Washington University Law Professor who had previously reviewed the Casolaro autopsy report on behalf of a group of Washington-based journalists.

We also reviewed documents at the Central Intelligence Agency and at FBI headquarters. In addition, we met with the Hamiltons and INSLAW's counsel, received documents and other

information from them and followed various leads they provided. Finally, we reviewed all the telephone calls and mail received by the producers of the television program "Unsolved Mysteries," following the airing on March 11, 1993 of a segment about Mr. Casolaro's death.

B. Casolaro's Death

1. Discovery of the Body

Mr. Casolaro arrived at the Sheraton Inn in Martinsburg, West Virginia on Thursday, August 8, 1991. He was supposed to have checked out from his room, number 517, by 12:00 p.m. on Saturday, August 10, 1991. At about 12:59 p.m., Sharon Palmer, the maid assigned to cleaning the fifth floor, knocked on Mr. Casolaro's door and got no answer. She used her passkey to enter the room. She noticed the bathroom door was halfway open. She looked inside and saw blood on the floor and blood on a towel. She did not go inside the bathroom, but left and called for help. Another maid, Linda Williams, arrived and saw the blood on the bathroom floor, but did not enter the bathroom. Ms. Williams left and returned with hotel employees Barbara Bettinger, David Avella, Sandy Bogert, and Eric Weidman. Mr. Avella called the police.

Minutes later Patrolman Glenn Macher of the Martinsburg City Police Department arrived. He ordered all the hotel employees who had just been inside the room to go the hotel manager's office and wait to be interviewed by other officers. The

patrolman then went inside Mr. Casolaro's room. Within minutes, Martinsburg Police Captain Ted Anderson, Detective John McMillen, Patrolmen Shannon Armel and Terry Stanley and paramedics arrived.

2. The Death Scene

Casolaro's Body

According to police reports and witnesses we interviewed, Mr. Casolaro's nude body was in the bathtub. The water was bloody and cold. The tub was about half to three-fourths full. Mr. Casolaro was sitting with his feet toward the faucet. He was leaning against the side of the tub with his head slumped over the side. His right arm was hanging over the side of the tub, and his right hand was lying flat on the floor. His left hand was submerged under water, tucked beneath his left thigh. Both of Mr. Casolaro's wrists had cut wounds. The fingernails on the thumb, forefinger and middle finger of his right hand appeared to have been chewed.

A used shoelace was draped loosely around Mr. Casolaro's neck. Another used shoelace was found inside the bathtub. Two white hefty trash bags were floating in the bathtub. A single-edge razor blade was inside the bathtub. An empty can of Milwaukee's Best beer was also inside the tub.

The Bathroom

The wrapper from the razor blade was resting against the side of the bathtub. Next to the bathtub, on the bathroom floor, there was a broken drinking glass and a half-full bottle of "Caves Alianca," a Portuguese white wine. There was a bloody

towel on the floor next to the tub. There were bloodstains on the tile around the tub, on the bathroom floor and on the toilet seat. Some bloody water had splattered across the small bathroom to the sink area.

There was an ashtray on top of the toilet tank. Three cigarette butts were in the ashtray, and a pack of Carlton cigarettes was on the toilet tank next to the ashtray. The bathroom was later dusted for fingerprints. Two prints removed from the bathroom sink were identified later as Casolaro's left index and left middle fingers.

There was no sign of any struggle having occurred inside the bathroom.

The Bedroom

The police inspected the bedroom area. They found no sign of forced entry, no sign of any struggle inside the room, and no sign that anyone else had been inside the room. The door to the adjoining room (room 515, occupied by two visitors from Pennsylvania who had come to Martinsburg for a soccer tournament, a 72-year old woman and 70 year-old man) was locked, and the safety chain was secure. The bedspread was partially turned down, but the sheets were not turned down. There was no blood in any part of the hotel room other than the bathroom.

Mr. Casolaro's clothes were laid out on top of the bed. None of the fixtures in the room had been broken or knocked over. Mr. Casolaro's personal effects appeared to be intact. His wallet and driver's license were found inside his coat pocket.

There was no sign that anyone had gone through any of Mr. Casolaro's belongings. The police described the scene as "quiet."

There was an unused ashtray inside the bedroom. It had a fingerprint on the bottom, but the police were unable to identify that fingerprint. The trash can inside the bedroom contained a Sheetz Convenience Store coffee cup. On top of it were five empty cans of Milwaukee's Best beer. The police later conducted hair and fiber analyses on various items recovered in the room, but no evidence was developed indicating that anyone other than Mr. Casolaro had been inside the room before he died.

The police found a large black tote back in the bedroom. Inside the bag were, among other items, an empty bottle of Vicodin pills (which the police later determined had been prescribed for relief of pain following oral surgery performed on Mr. Casolaro in 1988); one box of Hefty trash bags (with two bags missing); two green lawn-type garbage bags; one unopened bottle of "Caves Alianca" white wine; one corkscrew; and three packs of Carlton cigarettes.

The police found, on the coffee table, a box of razor blades with four unused single-edge blades inside. The box had room for five blades. The blades matched the single blade found inside the tub.

The police did not find a briefcase or any documents in the hotel room. They did find various credit card receipts, including two receipts from the nearby Stone Crab Inn for

Thursday, August 8 and Friday, August 9.

The Suicide Note

The police also found a suicide note, written on the fourth page of a legal pad sitting on the coffee table, next to the box of razor blades. The top three pages in the pad were blank and had been folded over the top and underneath the back of the legal pad. The note said:

> To my loved ones, Please forgive me -- most especially my son -- and be understanding, God will let me in.

The police later determined through handwriting and ink comparisons that Mr. Casolaro wrote the note with a pen that was on the coffee table near the legal pad. His right thumbprint was the only fingerprint found on the legal pad.[39]

Casolaro's Car

The police found Mr. Casolaro's car keys and located his car, a 1981 Honda Accord, in the Sheraton hotel parking lot. There was no sign that the car had been broken into or searched. They lifted two of Mr. Casolaro's fingerprints from the driver's side window. They also found a pack of Carlton cigarettes in the car. The car was impounded and sent to a local body shop for safekeeping.

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[39] Some individuals have suggested that Mr. Casolaro may have been forced to write the suicide note, and that he was leaving a clue by making the note uncharacteristically brief and by the reference to God "letting him in." Proponents of this theory note that, as a Catholic, Mr. Casolaro would have known that suicide was a sin, so he must have used that phrase to tip his friends that he was not dying voluntarily. We uncovered no evidence supporting this theory.

3. Interviews of Hotel Employees

While the patrol officers were examining the hotel room, Captain Anderson and Detective McMillen interviewed the hotel employees who had discovered Casolaro's body. None of the employees, including the maids, had seen anything suspicious that morning. None had seen anyone enter or leave Mr. Casolaro's room. The last employee who had seen Mr. Casolaro alive was Barbara Bettinger, who had talked with him outside his room Friday afternoon.

4. The Coroner's Investigation

Thirty minutes after the police arrived, Berkeley County coroner Sandra Brining and her husband, Martinsburg city paramedic David Brining, entered room 517. Mr. Brining photographed Mr. Casolaro's body and the bathroom area. Ms. Brining examined the body. She noted eight cuts on the underside of Casolaro's left wrist and four cuts on the underside of his right wrist. There was also a bruise on the inner part of the upper left arm. There were no other visible signs of trauma to the body. "Light" rigor mortis was present in both arms. Livor mortis was present, but had not yet set, in the buttocks, neck, face, arms and legs.

During Ms. Brining's examination of the body, the bloody bathtub water was drained. Ms. Brining failed to preserve a sample of the water.

Ms. Brining classified the death as a suicide, and contacted Brown's Funeral Home in Martinsburg to transport the body.

Funeral home employees John Arvin and Robert Fields arrived at room 517 at approximately 2:00 p.m. The bathroom door was removed to allow room for the body to be taken out of the room. The body was placed in an ambulance and taken to Brown's Funeral Home in Martinsburg.

5. Handling of Death Scene Following Removal of Body

After the body was removed, the Martinsburg police locked the room but failed to seal it formally.

On Monday morning, August 12, 1991, Detectives Catlett and McMillen returned to room 517 to conduct a further investigation after Casolaro's family had alerted them about Mr. Casolaro's work and the threats he had allegedly received. Although the police had not officially sealed the room when they left Saturday afternoon, the hotel manager, Sam Floyd, had kept the room locked for the remainder of Saturday and all day Sunday. Detective McMillen told us that the hotel room was in exactly the same condition as it had been when he and the other officers left it Saturday. The room had not been cleaned. According to the detective, nothing had been rearranged or disturbed. There was no sign that anyone had been inside the room.

6. Examination and Embalming of the Body at the Funeral Home

Ms. Brining spent two hours examining Mr. Casolaro's body at the funeral home on Saturday afternoon. Patrolman Armel arrived at Brown's Funeral Home at approximately 3:30 p.m., after the examination had started. He watched as funeral home employee Robert Fields drew a blood sample directly from Casolaro's heart.

Ms. Brining and Mr. Fields asked Patrolman Armel to notify Mr. Casolaro's next-of-kin. Patrolman Armel relayed that request to Detective McMillen, who had returned to the station.

Patrolman Armel asked Ms. Brining for the cause of death, and she said that Mr. Casolaro had bled to death. She determined that the wounds to the wrists had been self-inflicted, and that the manner of death was suicide.

As Ms. Brining and Patrolman Armel were preparing to leave, Charles Brown, the owner of Brown's Funeral Home, asked Ms. Brining if the body could be embalmed. Ms. Brining said that she was releasing the body to the funeral home, that an autopsy would not be conducted because the death was a suicide, and that the body could be embalmed. Mr. Fields then embalmed the body.

The decision to permit the embalming of Casolaro's body before an autopsy could be performed has been the subject of much controversy in the press and elsewhere. We have concluded that the decision was not unreasonable in light of the physical evidence suggesting that Mr. Casolaro had committed suicide and the well-established practice in the Martinsburg area of performing "courtesy" embalmings for decedents from other localities. We also note, however, that Ms. Brining should have waited a few more hours before releasing the body to see whether Casolaro's next-of-kin had been notified. Under West Virginia law, a deceased's body may not be embalmed unless the authorities have first made "due inquiry" as to the desires of the next-of-kin. West Vir. Code Ann., § 30-6-8 (1993). As discussed in the

next section, the Martinsburg Police requested the Fairfax County police to notify Casolaro's next-of-kin at 3:30 p.m., before the embalming. As described below, the Fairfax Police reported back at 5:00 p.m., after the embalming had started, that they had been unable to do so. Although Ms. Brining should have waited until after the Martinsburg police had heard back from the Fairfax County police, ultimately it made no difference as the body would have been embalmed once the Fairfax County police had reported they were unable to locate any next-of-kin.

We are unaware of any evidence that suggests that the decision by Ms. Brining approving the embalming of the body was made to further any type of cover-up or conspiracy.[40] In fact, the decision appears to be consistent with the custom and practice in the Martinsburg area. During a lawsuit filed by Casolaro's family against Brown's Funeral Home, Berkeley County, and the City of Martinsburg, an attorney for Casolaro's family took the sworn deposition of Mr. Brown. In his deposition, Mr. Brown testified that "courtesy embalmings" are standard procedure in Martinsburg for decedents from other localities. (Casolaro, et al., v. Brown Funeral Home, et al., No. 92-C-721, Circuit Court

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[40] The media have reported that Ms. Brining and Mr. Brown had a dispute over whether she had authorized him to embalm Casolaro's body. Our investigation found that they both agreed that she did authorize the embalming. In her deposition during an unsuccessful suit filed by the Casolaro family, Ms. Brining testified that, as she was leaving the funeral home, she told Mr. Brown that "the body is released." (Deposition of Sandra Brining, Jan. 14, 1993 at 92). Mr. Brown then asked whether the body could be embalmed, and Ms. Brining said yes. Mr. Brown confirmed Ms. Brining's recollection.

for Berkeley County, W. Va., Deposition of Charles Brown, Sept. 13, 1993, at 27, 35.)

Furthermore, the embalming of the body did not have the adverse impact on the subsequent autopsy that has been speculated. Embalming typically precludes the ability to obtain accurate toxicological studies of bodily fluids. Here, however, the embalming did not interfere with the autopsy as the medical examiner and toxicologist had access to four separate bodily fluid samples and organs that had been unaffected by the embalming: (1) the blood sample that Mr. Fields had taken directly from Casolaro's heart, before the embalming had been performed; (2) a small amount of urine that had not been evacuated at the time of death because of the submersion of Casolaro's body in the bath water, and that had not been tainted due to Mr. Fields' failure to inject embalming fluid into the bladder; (3) a small amount of vitreous fluid from behind the eye sockets; and (4) the liver, which Mr. Fields had entirely missed when he failed to insert the trocar (embalming tool) into that organ.

7. Notification of Next-of-Kin

At 3:30 p.m. on Saturday, August 10, Detective McMillen called the Fairfax County (Virginia) Police Department and notified them of Mr. Casolaro's name, address, and apparent suicide. He requested that the Fairfax Police Department notify Mr. Casolaro's family. The Fairfax police said they could not do so unless they were notified by teletype. At 4:00 p.m.,

Detective McMillen sent the requested teletype but received no acknowledgement. A few minutes later he sent a second teletype.

According to police records, a Fairfax County patrol car drove to Mr. Casolaro's house at approximately 4:30 p.m. The officer knocked. When no one answered, the officer left his business card on Mr. Casolaro's door. The officer returned to the station and called Detective McMillen at 5:00 p.m. Detective McMillen asked the officer to attempt to notify Casolaro's next-of-kin and to ask them to contact the Martinsburg police to provide instructions regarding funeral arrangements.

Inexplicably, the Fairfax County police made no effort to locate any of Mr. Casolaro's relatives, other than going to his house and leaving a business card. Fairfax police would have found the name of Dr. Tony Casolaro, Mr. Casolaro's brother, in the local phone book if they had looked. The anguish that was ultimately caused by the belated notification could easily have been and should have been avoided.

Finally, on Monday, August 12, the Martinsburg police authorities did what the Fairfax police department should have done two days earlier. Detective Sergeant Swartwood called directory assistance for Fairfax County, received the listing for Dr. Tony Casolaro, and called the number. Mr. Casolaro's mother was at Dr. Casolaro's house and answered the phone. Detective Sergeant Swartwood notified Mrs. Casolaro of her son's death at that time.

C. The Autopsy

Shortly after Mr. Casolaro's family was notified of his death, Dr. Tony Casolaro informed West Virginia authorities that his brother had been working on a sensitive story and that he had received death threats. Dr. Casolaro urged the police to conduct an autopsy. Detective Sergeant Swartwood relayed this information to Ms. Brining who agreed to contact the West Virginia Deputy Chief Medical Examiner, Dr. James L. Frost, to arrange for an autopsy. Casolaro's body was moved to Morgantown, West Virginia on Tuesday, August 13, 1991. That afternoon, Dr. Frost conducted preliminary and fluoroscopic examinations of the body. The results were negative. The next morning, August 14, 1991, Ms. Brining, Patrolman Armel, and Patrolman Stambaugh traveled to Morgantown to observe the autopsy.

The summary of the findings of the autopsy that follows is based on a review of the autopsy report and interviews of Dr. Frost and others who were involved with or observed the autopsy.

Dr. Frost spent a considerable amount of time examining Mr. Casolaro's wrists. The undersides of both wrists had deep cuts, though the depth was not extraordinary for a suicide, according to Dr. Frost. The angles of the cuts were consistent with the wounds being self-inflicted. Mr. Casolaro was right-handed. There were four cuts on Casolaro's right wrist and eight on his left. According to Dr. Frost, Mr. Casolaro probably made the cuts on his left wrist first. The uppermost cut on the left wrist appeared to be a superficial cut. Dr. Frost told us that

the superficial cut on the left wrist was not consistent with a so-called "hesitation cut," something that certain forensic pathologists look for in suicide cases. In Dr. Frost's view, the lack of a hesitation cut could be cited as evidence that the victim was particularly determined to commit suicide.

The autopsy revealed that Mr. Casolaro injured one of the tendons in his left wrist with a particularly deep cut. However, that injury would not have deprived him of the motor ability in his left hand to grasp the razor and cut his right wrist. According to Dr. Frost, that is exactly what Mr. Casolaro did. The other cuts were also deep, but not so deep as to be suspicious, according to Dr. Frost.

The autopsy found no indications that Mr. Casolaro had been involved in a struggle. Three of the fingernails on his right hand had been chewed. Mr. Casolaro's brother, Dr. Tony Casolaro, told us that his brother did not bite his nails. However, the autopsy uncovered no evidence that anyone else bit his nails or that he had bitten the nails during a struggle in the hotel room. There was also a faint contusion on Mr. Casolaro's left anterior bicep. Dr. Frost determined that the bruise was probably caused two days before Mr. Casolaro's death. There were other faint blue marks and contusions on the body, but those were determined to be postmortem skin discolorations caused by the embalming process.

Dr. Frost also noted during the autopsy that Mr. Casolaro's tongue was normal, indicating that he did not appear to have

ingested any foreign substance. There was no indication of force having been applied to his mouth or lips. There was no sign of choking, strangulation, or drowning. No water was found in Mr. Casolaro's lungs.

The neuropathologist, Dr. Sydney S. Schochet, examined Casolaro's brain and determined that he had been suffering from multiple sclerosis. Dr. Schochet opined that Mr. Casolaro probably had been experiencing vision problems. In addition, the autopsy revealed that Mr. Casolaro was suffering from "moderately severe" arteriosclerosis.

Dr. Frost determined that the cause of Mr. Casolaro's death was "exsanguinating hemorrhage from multiple incised wounds to the wrists." He concluded that the manner of death was suicide. He estimated that the time of death was between 7:00 a.m. and 8:00 a.m. on Saturday, August 10, 1991. Dr. Frost told us that Mr. Casolaro probably lost consciousness within five to eight minutes of cutting himself and that he likely died within 15 minutes.

Dr. Frost also submitted the blood sample that had previously been taken from the heart, the urine and vitreous fluids and a liver sample (none of which had been tainted by the embalming fluids) to the West Virginia toxicology laboratory for analysis. The results of the toxicology studies did not alter Dr. Frost's conclusions as to the cause and manner of death. Rather they were fully consistent with suicide.

The toxicology tests performed by Dr. Cash revealed several things. First, Mr. Casolaro had an alcohol content of .04 in his urine. According to Dr. Frost, that alcohol level is consistent with the metabolization rate for a man of Mr. Casolaro's height and weight consuming the six beers found in the hotel room as well as some of the white wine during the night and early morning hours before his death. No alcohol was found in the blood sample taken from the heart. Second, trace amounts of the chemical components for Vicodin were found in some of the samples. As indicated above, an empty bottle of Vicodin was found in Mr. Casolaro's luggage in the hotel room. And third, trace amounts of a tricyclic anti-depressant medication were also present. The tricyclic was never traced, and we were unable to determine its origins. However, the amount was insignificant. Dr. Cash also conducted a series of tests for the presence of a variety of "exotic" drugs or any other substance that could have been used to render Mr. Casolaro unconscious or that could have contributed to his death. All those tests were negative.

Dr. Cash also tested the wine found in the open bottle adjacent to the bathtub for the presence of any drugs. That test was also negative.[41]

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[41] Several months after the autopsy was conducted, a group of journalists in Washington, D.C. asked Professor James E. Starrs, a noted forensic pathology expert at the George Washington University law school, to review Dr. Frost's autopsy report. Professor Starrs agreed to do so. In an interview with the Washington Business Journal (week of Nov. 9-15, 1992, p. 13), Professor Starrs stated that he agreed with Dr. Frost that Mr. Casolaro's wounds had been self-inflicted. He also stated that he doubted whether any additional scientific techniques would

D. Additional Police Investigation

After learning from Dr. Casolaro and others about the nature of Mr. Casolaro's work and the threats that allegedly had been directed at him, the Martinsburg police began a more substantial investigation into the matter. We carefully reviewed the records of that investigation and conclude that it was sufficient given the nature of the allegations. Furthermore, we concur with the conclusion reached by the Martinsburg Police Department that the results of that investigation support the conclusion that Mr. Casolaro took his own life.

The following is a summary of some of the important findings of that investigation:

- The police located and interviewed the occupants of rooms 514, 515, 516, 519 and 520 on the night of August 9-10, 1991. None of the individuals staying in those rooms recalls hearing any unusual noises coming from room 517, Mr. Casolaro's room, either that evening or the next morning. Nor did any of them recall seeing anyone entering or leaving room 517 during the morning of August 10.

- The occupant of room 519, a man from St. Paul, Minnesota, had had several drinks with Mr. Casolaro on Thursday, August 8. Police noticed during their interview of him that his wrist was bandaged. He told the police officers conducting the interview that he had hurt himself playing volleyball. The officers were able to verify that story.

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have changed the outcome of the autopsy. Professor Starrs agreed with Dr. Frost that the small contusions on Casolaro's body were caused by the embalming fluid, although he criticized the West Virginia authorities for embalming the body so quickly. Professor Starrs also noted that the suicide note was typical in that it was unsigned and made apologies to Casolaro's family. Professor Starrs summarized his view of the case by saying, "[I]f this was a homicide, it would be the most singularly remarkable murder on record, either in fiction or nonfiction."

- During the interviewing of all of the hotel employees who may have had contact with Mr. Casolaro, a front desk employee told the police that Mr. Casolaro may have had a brown briefcase when he checked into the hotel. No other hotel employee recalled seeing Mr. Casolaro with a briefcase. Police were unable to locate any briefcase or documents during searches of Mr. Casolaro's hotel room, his car, the hotel or the area surrounding the hotel.

- The hotel manager stated that there were six keys for room 517. One key was found in the room among Mr. Casolaro's belongings during the initial search of the room on August 10. The remaining five keys were found at the front desk.

- The razor blades found in the bathtub and in the bedroom were manufactured by Techni-Edge Manufacturing Corporation in New Jersey. Although they checked several retail outlets in the Martinsburg and Fairfax County areas, the Martinsburg police were unable to determine where the blades had been purchased. The West Virginia State Police Crime Laboratory was unable to lift any fingerprints from the blade found in the bathtub because it had been immersed in water. (We asked the FBI laboratory to attempt to lift a fingerprint from the blade, but they too were unable to do so.)

- On August 21, 1991, during a search of Mr. Casolaro's home, police found two unopened bottles of "Caves Alianca" white wine under the kitchen sink. The bottles matched those found in the bathroom of the hotel room and in Casolaro's luggage. The Martinsburg police determined that the Giant Supermarket chain in Northern Virginia sells Caves Alianca wine. The brand is unavailable in West Virginia.

- During their search of Mr. Casolaro's house, the police found two tennis shoes from two different pairs -- one Nike and one Reebok -- that were each missing a shoelace. The shoes were in the closet in the upstairs bedroom. The police asked the West Virginia State Police Crime Laboratory to attempt to match the two laces found at the death scene with the two shoes from Mr. Casolaro's house. The crime laboratory was unable to make a definite match, although a visual comparison of the laces and the shoes seemed to indicate that the eyelet marks on the laces matched the eyelets on the shoes. (We had the FBI laboratory conduct a variety of tests on the laces and the shoes to attempt to match them, but the results were inconclusive.)

- On August 29, 1991, and on September 27, 1991, the Martinsburg police received copies of a passport photo of Hassan Ali Ibrahim Ali from various individuals. This may have been the same photograph that Mr. Casolaro had shown to Ben Mason in his basement office on Wednesday, August 7. (See discussion below.) There is no evidence that Mr. Casolaro ever met Ibrahim, or that Ibrahim -- whoever he is -- had anything to do with Mr. Casolaro's death.

- The West Virginia State Police Crime Laboratory determined that the blood stains found in the bathroom in room 517 matched Mr. Casolaro's blood.

- The West Virginia State Police Crime Laboratory determined that the handwriting on the suicide note matched Casolaro's known handwriting. The ink used to write the note matched the ink in the pen found next to the suicide note. Mr. Casolaro's right thumbprint was found on the legal pad containing the suicide note.

- The West Virginia State Police Crime Laboratory determined that Casolaro's fingerprints matched those lifted from the bathroom sink. The fingerprint found on the unused ashtray in the hotel bedroom could not be identified.

- The West Virginia State Police Crime Laboratory determined that the wine found in the open "Caves Alianca" bottle on the bathroom floor was untainted, as were the wine traces on the broken drinking glass on the bathroom floor.

Blood Spatter Analysis

In December 1991, the Martinsburg police and the Berkeley County Prosecuting Attorney asked Dr. Henry C. Lee, the Chief Criminalist at the Connecticut State Crime Laboratory and a nationally recognized blood spatter expert, to conduct a blood spatter analysis of the bathroom where the body had been found. The Martinsburg police provided Dr. Lee with the death scene photographs, as well as a videotaped reenactment of the death the police had prepared with Dr. Frost's assistance on December 12,

1991 in the room where Mr. Casolaro had died. After reviewing Dr. Frost's autopsy report and other evidence, Dr. Lee created a three-dimensional photographic montage from the photographs taken of Casolaro's body and the bathroom on August 10, 1991. Dr. Lee issued his report on January 24, 1992.

Based on the pattern of the blood found in the bathroom, Dr. Lee theorized that Mr. Casolaro filled the tub with an amount of water; poured himself a drink of wine, and sat the glass on the side of the bathtub; sat down on the side of the bathtub; cut his wrists with the razor blade; and then sat inside the tub. Mr. Casolaro then probably got into the bathtub and placed one of the white hefty bags over his head as added insurance that he would die. (According to his close friend, Ann Klenk, Mr. Casolaro had discussed with her several months before his death how author Jerzy Kozinski had committed suicide in a bathtub by tying a plastic bag over his head.)

Dr. Lee theorized that Mr. Casolaro next submerged his wrists into the water and bled into the water for a few moments. According to Dr. Lee, he probably became extremely uncomfortable with the bag over his head and pulled it off, flinging bloody water across the floor and to the sink opposite the bathtub. Mr. Casolaro then attempted to stand up in the tub, bracing himself against the tile wall. By that time, however, he had lost too much blood. According to Dr. Lee, he probably become woozy and slumped back into the tub, causing bloody water to slosh over the side of the tub and onto the bathroom floor. As he fell back

down into the tub, Mr. Casolaro's arm knocked the drinking glass onto the floor, where it broke. His right arm hung outside the tub as he slumped against the side of the tub. His head came to rest on the side of the tub.

Dr. Lee concluded that the blood spatter analysis he had conducted established that Mr. Casolaro's death was "not inconsistent with a suicide."

Financial Review

The police also reviewed Mr. Casolaro's financial condition. They were unable to find any evidence that he had earned any income during the months before he died. When the Martinsburg police searched his house, they found his checkbook and checking account statements. The documents indicated that Mr. Casolaro had recently received loans from family members.

The police also found a copy of the promissory note for Mr. Casolaro's house. The note indicated that a balloon payment of $178,790 was due August 9, 1991. The police checked with the mortgage company and learned that Mr. Casolaro had received a 30-day extension, to September 8, 1991, on the payment. The police also found Mr. Casolaro's July 1991 phone bill, in the amount of $922.00.

The Martinsburg police officially concluded their investigation on January 25, 1992, after expending over 1,000 aggregate hours on the case. We believe that the criticisms directed at that investigation are not warranted. In our opinion, the Martinsburg City Police Department conducted a

thorough, professional investigation. Although Ms. Brining should not have authorized the embalming of Casolaro's body before hearing back from the Fairfax County police and although the Martinsburg police should have sealed the hotel room, those mistakes had no significant adverse impact on the investigation. We also believe that Dr. Frost, Dr. Cash, and Dr. Schochet performed excellent autopsy, toxicology, and neuropathology studies.

E. Our Investigation

1. "The Octopus"

During our investigation into Mr. Casolaro's death, it became clear that many of the sources for Mr. Casolaro's theories about the government's involvement with INSLAW were the same as those identified by the Hamiltons, though Mr. Casolaro's theory of "the Octopus" involved an even more far-flung conspiracy than that advanced by INSLAW. In a November 1990 book proposal he provided to a New York literary agent, he described the conspirators as follows:

> An international cabal whose freelance services cover parochial political intrigue, espionage, sophisticated weapon technologies that include biotoxins, drug trafficking, money laundering and murder-for-hire has emerged from an isolated desert Indian reservation just north of Mexicali. . . . I propose a series of articles and a book, a true crime narrative, that unravels this web of thugs and thieves who roam the earth with their weapons and their murders, trading dope and dirty money for the secrets of the temple.

At various times, the Octopus theory linked the INSLAW matter, the alleged connection of the Cabazon Indian reservation

with international arms dealing, the assassination of "super gun" inventor Gerald Bull, the suicide bombing of the U.S. Marine barracks in Lebanon, the BCCI scandal, the Iran Contra affair, the Iraqi arms procurement network, the collapse of the savings and loan industry and other matters.

Mr. Casolaro apparently first learned about INSLAW's dispute with the Justice Department in mid-1990 when Terry Miller, a friend, told him about the dispute and encouraged him to talk to the Hamiltons. By everyone's account, Mr. Casolaro became obsessed with the INSLAW story and the web of conspiracy allegations associated with it over the next few months. Mr. Casolaro soon began to develop his Octopus theory whereby the INSLAW affair was merely one arm of an octopus that had been engaged in international intrigue since the early 1950s.

During the period from mid-1990 to his death, Mr. Casolaro took hundreds of pages of notes during his telephone calls with the Hamiltons and others. Mr. Casolaro's close friend Ann Klenk found his notes in the basement office of his house the day his death was disclosed. Ms. Klenk provided the notes to Tara Sonenshine, a producer for ABC's Nightline program. Ms. Sonenshine examined the notes and told Ms. Klenk that they did not appear to contain any clues about Mr. Casolaro's death. Several other journalists looked at the notes and arrived at the same conclusion. Ms. Klenk sent the notes to the Investigative Reporters' and Editors' Association (IRE) at the University of Missouri, where they were catalogued and archived. We obtained a

complete set of the notes from IRE. We also obtained copies of certain pages that Ms. Klenk had kept.

We have carefully examined the notes, consisting of several hundred pages. The notes are filled with names, places, phone numbers, diagrams, and references to various international intrigues, including arms dealing, drug trafficking, chemical warfare, money laundering, terrorism and political assassinations. Some of the notes appear to have been taken during telephone conversations with various people, while other notes appear to reflect information obtained from newspaper articles and magazines. Finally, those notes indicate that Mr. Casolaro spent a considerable amount of time receiving and soliciting information from many of the same sources relied on by INSLAW: Michael Riconosciuto, Charles Hayes, Robert Booth Nichols, and others.

2. August 5-10, 1991

We spent a significant amount of time trying to reconstruct the last week of Mr. Casolaro's life in the hope that such a reconstruction might lead to some answers about his death. The following reconstruction is based on numerous interviews, documentary evidence and police records. (Several of the statements attributed to various witnesses are based on police reports of interviews with those witnesses and do not reflect separate questioning by us.)

Monday, August 5, 1991

On Monday, August 5, Mr. Casolaro saw his brother, Dr. Tony

Casolaro, during the day. Dr. Casolaro told us that he told his brother that he looked tired. Later that day, Ann Klenk saw Mr. Casolaro's car parked outside a bar at a local shopping center. According to Ms. Klenk, she went inside and saw Mr. Casolaro, head slumped down, sitting at the bar. She said that Mr. Casolaro "looked terrible." He told her in a tone that Ms. Klenk described as disgust: "I just broke INSLAW. Bill Hamilton's going to be real excited." Mr. Casolaro then told Ms. Klenk, "You can have the story, and if you don't want it, you can give it to Jack Anderson." (Ms. Klenk had once worked as a reporter for syndicated columnist Jack Anderson). Finally, Mr. Casolaro told Ms. Klenk he had "just gotten back" from West Virginia and that he was going back again.

Ms. Klenk said she was worried about her friend. She ordered a pizza for him, begged him to eat something and left.

Tuesday, August 6, 1991

On Tuesday, August 6, Mr. Casolaro again spoke to Ms. Klenk and discussed a book proposal he had sent to his agent two weeks earlier. Mr. Casolaro also had two phone calls that day with John Elvin, a journalist friend in Annapolis. According to Mr. Elvin, Mr. Casolaro asked him during those two calls to review the "stuff" he had sent him. Mr. Casolaro mentioned that he was going to West Virginia and said he would call Mr. Elvin when he returned.

Mr. Casolaro also called his friend Jim Pittaway that day and told him that he was going to West Virginia to meet someone,

but that he did not know that person's identity.

During the day, he spent some time packing a suitcase. According to Olga Mokros, Mr. Casolaro's neighbor and housekeeper, Mr. Casolaro told her while she was helping him pack that he would not be seeing his son again. Ms. Mokros also told us that he took her into his basement office and showed her where he kept his will.

That evening, Mr. Casolaro had dinner at the home of Larry Stich, a former IBM attorney he had known for several years. Mr. Stich told us that Mr. Casolaro did not seem depressed to him. Mr. Stich recalls his friend telling him that evening that he was going to meet with "somebody" regarding his book project.

After returning home, Mr. Casolaro called Robert Booth Nichols at his home in Los Angeles, speaking to him from 1:40 a.m. until 2:46 a.m. EST. Mr. Booth Nichols told us that he remembers Mr. Casolaro mentioning that he was planning a trip to the Cabazon Indian Reservation in Southern California where he would "wrap up" his research. According to Mr. Booth Nichols, Mr. Casolaro sounded confident and not depressed.

Wednesday, August 7, 1991

On Wednesday, August 7, Ben Mason, a close friend, came over to Mr. Casolaro's house to visit. Mr. Mason told us that Mr. Casolaro was in an "exuberant" mood that day. Mr. Casolaro showed Mason some papers in his basement office and told him that the papers were in a specific order. Mr. Mason recalls seeing a photocopy of a passport photo of a young man named "Ibrahim."

While Mr. Mason was still there, Mr. Casolaro received a call from Anne Weinfield and her husband. They were leaving Washington to spend a few days at their beach house, and they customarily called Mr. Casolaro to say goodbye whenever they left town. Both Ms. Weinfield and her husband spoke with Mr. Casolaro. They both recall that during the conversation Ms. Weinfield told her husband that something was "definitely wrong" with their friend. Ms. Weinfield told us that Mr. Casolaro rambled incoherently and seemed to have lost touch with reality.

Mr. Casolaro also spoke with his cousin, Dr. Louis Petrillo, a New York psychologist, that day. In a letter written ten days later, Dr. Petrillo wrote that Mr. Casolaro sounded "enthusiastic" on the phone, saying that he was "looking forward to meeting with a 'source.'" Dr. Petrillo noted in that letter that he had spoken frequently with his cousin during the months before his death, and that, in his judgment, he had not manifested "any symptoms or character traits . . . that could in any way be associated with a potential for suicide."[42]

That evening Mr. Casolaro and Ben Mason went out. Mr. Casolaro met a woman while they were at a hotel bar. At 2:00 a.m., after taking Mr. Mason home, he returned to the hotel and

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[42] We spoke with Dr. Petrillo more recently. He recalled the August 7, 1991 telephone call. With the benefit of hindsight, Dr. Petrillo now believes that Mr. Casolaro could very well have committed suicide. He stated that he was prepared to change the conclusions expressed in his August 17, 1991 letter based on what he now knew about the physical evidence and other circumstances surrounding Mr. Casolaro's death.

called the woman he had just met from the lobby phone to see if she would invite him to her room. She said no, and he returned home.

Thursday, August 8, 1991

According to Mr. Mason, Mr. Casolaro called him at 6:00 a.m. and told him of his failed attempt to rejoin the woman at the hotel. Mr. Casolaro laughed off the incident and told his friend he was going to West Virginia "to see the guys."

At about 10:00 a.m., Mr. Casolaro went to the office of his insurance agent, J.J. Kelly, Jr. Mr. Casolaro paid the premium for his homeowner's insurance to the Nationwide Mutual Fire Insurance Company. While he was at his agent's office, he called Danielle Stallings, his friend and real estate agent. Ms. Stallings told us that Mr. Casolaro mentioned that he wanted her to arrange a meeting for the following week with an acquaintance of hers whose mother-in-law was knowledgeable about the Philippines. As he was leaving Mr. Kelly's office, Mr. Casolaro asked Mrs. Kelly for directions to Interstate 66 - West, a common route from Northern Virginia to West Virginia.

Mr. Casolaro then drove to Martinsburg, West Virginia, and checked into the Sheraton Inn. The desk clerk, James Lopez, recalled that Mr. Casolaro checked in between 1:00 and 2:00 p.m. He had a reservation and gave Mr. Lopez a credit card. Mr. Lopez gave Mr. Casolaro one key to room 517. According to Mr. Lopez, Mr. Casolaro told him that he was not going to open the room right away because he was late for an appointment at the Stone

Crab Inn, a restaurant and bar not far from the Sheraton. Mr. Lopez said he thought Mr. Casolaro had an old, "beat up" briefcase with him, but he was not sure.

The bartender working at the Stone Crab Inn that day reported that Mr. Casolaro arrived at about 12:30 p.m.[43] The bartender who had previously worked at the Sheraton Inn, recognized Mr. Casolaro from a prior visit he had apparently made to Martinsburg about a year earlier. Mr. Casolaro told him that he was going to be meeting with "some Arabs" at about 1:00 p.m. According to the bartender, no one arrived. At about 1:20 p.m. Mr. Casolaro asked the bartender for four quarters. He went outside and returned a few minutes later. There are both cigarette machines and a public phone outside the Stone Crab Inn.

Mr. Casolaro had a bottle of wine and a draft beer that afternoon at the Stone Crab Inn. He spoke with another man at the bar about a vineyard the man owned. Mr. Casolaro charged twenty dollars worth of drinks on his Mastercard while at the Stone Crab Inn that afternoon.

Mr. Casolaro left the Stone Crab Inn at about 3:30 p.m., telling the bartender he wanted to go back to his hotel to check for messages and that he might be back later for the happy hour. However, Mr. Casolaro apparently went directly to a Pizza Hut restaurant located near the Sheraton. The waitress working

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[43] Although this is inconsistent with Mr. Lopez's recollection that Mr. Casolaro checked into the hotel between 1:00 and 2:00, and went to the Stone Crab Inn, we find the discrepancy insignificant.

there, a college student, positively identified him as having arrived at about 3:30 p.m. She said that he ordered a pitcher of beer and a small pizza. He drank the entire pitcher of beer but ate only one or two pieces of the pizza and left the Pizza Hut at about 4:00 p.m.

Mr. Casolaro was next seen at Heatherfield's lounge, located inside the Sheraton Inn. At this point there is a significant discrepancy in the recollections of two witnesses. The bartender, who had served Mr. Casolaro on a prior visit to Martinsburg, recalled that he walked into the bar between 5:30 and 6:00 p.m. She recalled that Mr. Casolaro drank beer by himself until about 6:30 p.m., when another hotel guest, the occupant of room 519 from St. Paul, Minnesota, sat down at the bar and began talking to him. The bartender remembered that Mr. Casolaro started drinking bottled beer, but later switched to draft beer. Mr. Casolaro spoke with the hotel guest from Minnesota until about 11:30 p.m., when the bar closed. The bartender does not recall seeing Mr. Casolaro talking with anyone else that night.

However, the waitress at the Heatherfield's Lounge told a different story. The police originally met her by chance, when they went to the home of one of the Sheraton desk clerks to interview him three days after Mr. Casolaro's death. She happened to be at the desk clerk's home. When the police showed her Mr. Casolaro's photograph, she said she remembered seeing him in the bar but could not remember anything else. Later that day

she contacted the police, saying she had now remembered that Mr. Casolaro had arrived at the bar at about 5:10 p.m., and that he sat at a table with another man whom she described as "dark skinned, like maybe Iranian or Arabian." The waitress recalled that both men were drinking draft beer, and that the "Iranian or Arabian" man was drinking very fast and was very insistent that he be served quickly. She claimed to have served four beers each to Mr. Casolaro and the other man. She also said the other man paid for all the beers in cash. Three days later, she helped the police prepare a composite drawing of the "Iranian or Arabian" person. On September 16, 1991, the police interviewed the waitress again. She still stood by her story, but, according to the police, her recollection seemed hazy and uncertain. No one has been able to determine who the "Iranian or Arabian" person was, if indeed there was such a person.

The waitress' recollection conflicts with the bartender's recollection in several respects, the most important of which are: (1) the bartender recalled Mr. Casolaro entering the bar alone and initially sitting by himself while the waitress recalled him sitting with an "Iranian or Arabian" man; (2) the bartender recalled that he sat at the bar while the waitress maintained that he sat at a table; (3) the bartender recalled that he started drinking bottled beer while the waitress claimed he only drank draft beer; and (4) the bartender claimed Mr. Casolaro only spoke with one person, the guest from Minnesota, the whole evening while the waitress claimed he spoke with the

"Iranian or Arabian" man.

The bartender's recollection is corroborated by Mr. Casolaro's bar tab, which shows that, beginning at 6:00 p.m., Mr. Casolaro purchased one bottled beer, then another bottled beer, and then switched to draft beer. In all, he purchased seven beers that evening.[44] The bartender's recollection is also corroborated by the Minnesota guest's memory of the evening. He recalled meeting Mr. Casolaro for the first time near the ice machine down the hall from their fifth floor rooms sometime between 5:00 and 6:00 p.m. A short while later, he went down to the hotel bar, saw Casolaro drinking alone and joined him. According to the hotel guest, they spent the rest of the evening talking. Mr. Casolaro told him all about the Octopus project and said he was waiting to meet "some Arabs." He recalled that Mr. Casolaro acted agitated when the "Arabs" failed to show.

Given the fact that both the guest from Minnesota and the credit card records are consistent with the bartender's recollection, we are led to believe her recollection is likely to be the more accurate. In any event, the Martinsburg police were unable to locate any individual matching the description provided

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[44] Mr. Casolaro's family and friends insist that Mr. Casolaro was neither an alcoholic nor a "heavy drinker". However, Wendy Weaver, a close friend, told us that he drank to excess two or three times per week. Furthermore, Ms. Weaver and Lillian Pittaway told us that he seemed to be drinking more heavily near the end of his life. Finally, an appointment book provided to us by his neighbor included passages written by Mr. Casolaro reflecting a struggle with his alcohol use. For example, in one passage, he wrote, "I wonder if the root of my drinking is loneliness -- for true companionship."

to them by the waitress, and there is no evidence linking such an individual with Mr. Casolaro's death.

Friday, August 9, 1991

The next day, Friday, August 9, 1991, Mr. Casolaro went to the front desk at the Sheraton at about 12:00 p.m. and told the desk clerk, Mr. Lopez, that he would be staying one more night. At about 1:30 p.m., a hotel maid, Barbara Bettinger, spoke with Mr. Casolaro outside his door. He asked whether the maids could clean his room right then because he had work to do. Another maid, Roxanne Willis, went inside the room and cleaned while he waited outside. Ms. Willis noticed a bottle of wine on the lamp table.

Mr. Casolaro was next seen at the Stone Crab Inn at about 2:30 p.m. He drank beer until about 5:30 p.m. According to the bartender who was on duty at that time, Mr. Casolaro seemed depressed and lonely and acted as if he wanted to talk to someone. He bought five beers, one shrimp cocktail and one crabcake sandwich with his credit card. The bartender who worked the 6:00 p.m. to 1:00 a.m. shift at the Stone Crab Inn did not see anyone matching Mr. Casolaro's description in the bar during her shift that night.

After leaving the Stone Crab Inn, Mr. Casolaro placed a collect call to his mother's house in Fairfax County at about 6:00 p.m. His family had planned a birthday party for his niece that evening. He spoke with his mother and told her he would be late for the party, if he made it at all.

At 7:00 p.m., a group of people from Pennsylvania, who had traveled to Martinsburg for a soccer tournament that weekend, checked into rooms 514, 515, 516 and 520. Mr. Casolaro was staying in room 517. At about 9:00 p.m., one of the occupants of room 515 saw someone matching Mr. Casolaro's general description enter room 517 with a key. She did not see the person's face, as his back was to her. However, she recalled that he was carrying a brown paper bag.

Shortly after midnight, Mr. Casolaro walked to the Sheetz Convenience Store across the parking lot from the Sheraton. He asked for coffee, and the store clerk brewed a fresh pot for him. She gave Mr. Casolaro a medium coffee and did not charge him because he had to wait for the pot to brew. Both the store clerk and another witness in the store at that time recalled that Mr. Casolaro seemed relaxed and that he made small talk with them both. When he left they saw him walk back toward the Sheraton.

The above account of Mr. Casolaro's movements on Friday, August 9 is not complete. We have not been able to pinpoint his whereabouts between noon and 1:30 p.m. or between 6:00 and 9:00 p.m.[45]

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[45] After learning of Mr. Casolaro's death, William Turner, one of Mr. Casolaro's sources for the Octopus theory, claimed to have met with him in the Sheraton parking lot on August 9. Mr. Turner has been unclear as to the time of the meeting, placing it anywhere between noon and 6:00 p.m. Mr. Turner has been inconsistent with other important aspects of his story as well. For example, shortly after Mr. Casolaro's death, he told local authorities that Mr. Casolaro had given him a "stack of documents eighteen inches high." However, he told us that Mr. Casolaro had given him three sealed manila envelopes containing documents before the August 9 meeting, and that he returned two of those

Saturday, August 10, 1991

As described above, Mr. Casolaro's body was found at approximately 1:00 p.m. Dr. Frost estimated the time of death as between 7:00 and 8:00 a.m.

3. Mr. Casolaro's State of Mind in August 1991

The most difficult aspect of any investigation involving the possibility of a suicide is the effort to determine why a particular individual might have taken his or her own life. Nevertheless, we felt it to be part of our task at least to address some of those issues. In our investigation, we found numerous factors that might have caused Mr. Casolaro concern and/or despair during the last year of his life. By identifying those factors, we do not pretend to conclude that they necessarily contributed to Mr. Casolaro's suicide. Rather, we identify them in order to provide a complete picture of the events leading up to his death.

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envelopes to Mr. Casolaro during that meeting. He said he kept the third packet in his safe. In any event, no one witnessed the meeting in the hotel's parking lot.

We find Mr. Turner's statements lack credibility. First, as indicated above, he has contradicted himself on several occasions. Second, he has made inaccurate statements about his background. Third, he has been convicted of a crime involving false statements. On September 13, 1991, he pleaded guilty in federal court to one felony count of making a false statement in 1988 to the Veteran's Administration. He was sentenced to 60 days in prison and five years probation. Then, on December 30, 1993, after Mr. Turner had moved to Tennessee and while he was still on federal probation, the Bureau of Alcohol, Tobacco and Firearms searched his home pursuant to a warrant. They found 23 firearms inside, including several with no serial numbers. He is currently facing probation revocation proceedings in Knoxville.

Financial Concerns

There is no question that, after spending over a year developing his Octopus theory, Mr. Casolaro found himself in a difficult financial condition and was greatly concerned as a result. As discussed above, Mr. Casolaro's home mortgage called for a balloon payment of $178,790 on August 9, 1991. Although the mortgage company extended the payment period for 30 days, that entire amount was coming due on September 8, 1991. The Martinsburg police investigation found that he had already borrowed substantial amounts from his family earlier in the year.

While he faced the balloon payment in a matter of weeks, Mr. Casolaro's income prospects appeared dim at the time of his death. Since the summer of 1990, when he first began to pursue the INSLAW story, he had repeatedly and unsuccessfully attempted to secure a publisher for his story. Mr. Casolaro asked his cousin, New York City psychologist and part-time author Dr. Louis Petrillo, to help him find an agent. In September, 1990, Dr. Petrillo arranged for him to meet a New York City literary agent. The New York agent agreed to represent Mr. Casolaro in attempting to negotiate a book deal.

On November 2, 1990, Mr. Casolaro sent a letter to the agent enclosing copies of various songs and poems he had written. Mr. Casolaro mentioned in the letter that he was now working on his investigation "exclusively," but that he was also looking for a paying job while waiting for an advance. Mr. Casolaro enclosed a resume that significantly overstated his prior professional

accomplishments. He also enclosed a six-page treatment for the book he was hoping to publish, which he entitled, "Behold, A Pale Horse: A True Crime Narrative."

In the treatment, Mr. Casolaro wrote about the Cabazon Indian reservation in Southern California and its alleged connection to international arms dealing; the assassination of "super gun" inventor Gerald Bull; and the suicide bombing of the U.S. Marine barracks in Lebanon. On the last page of the treatment, he proposed that "[t]he first three chapters of the manuscript should be finished within three months of an initial advance and each subsequent chapter will be delivered every month. The completed book should be ready for publication by the summer of 1991."

The New York City agent began searching for a more experienced literary agent who could put together a combined book and television deal for his client. He also asked Mr. Casolaro to sign a one-year "exclusive" representation agreement, under which the agent would receive a 20% gross commission, plus an additional 10% gross commission to any third parties, for any sales of "'Behold, A Pale Horse,' including without limitation phonograph recordings, video, television, motion pictures, radio, music publishing, songwriting, live performances, books, merchandising, lecture(s), seminar(s). . . ." The agreement was signed on March 14, 1991.

On December 10, 1990, Mr. Casolaro's New York City agent contacted Creative Artists' Agency (CAA), a major Hollywood

talent agency, to see whether they would be interested in meeting Mr. Casolaro. Six days later, CAA agent Melanie Ray flew to New York and met with Dr. Petrillo, Mr. Casolaro and his New York City agent for brunch. Mr. Casolaro had two drinks before Ms. Ray arrived and apparently did not make a good impression on her. During the meeting, Mr. Casolaro said the Octopus project was his "shot at a piece of investigative journalism to put me on the map," and that he wanted to do something "to make my son proud of me."[46] Ms. Ray said that CAA was not interested, but she offered to help him find another literary agent.

Several days later Ms. Ray wrote to the New York City agent, indicating that she had found another literary agent, Elizabeth Mackey, who was willing to read the "Pale Horse" treatment. In her letter Ms. Ray also referred to Casolaro's behavior at the New York brunch in unflattering terms: "To expect 'cloak-and-dagger' and to get slapstick was quite scintillating."

During the next six months, according to Ms. Ray's records, Mr. Casolaro and his New York City agent contacted both Ms. Ray and Ms. Mackey dozens of times to check the status of efforts to find a publisher and obtain an advance for Mr. Casolaro.

On April 20, 1991, after returning from a trip to see Mr.

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[46] This was not the first major investigative effort undertaken by Mr. Casolaro. In the mid 1970s, he spent considerable time pursuing an "alternative" theory on the Watergate break-in in which the break-in was actually engineered by intelligence operatives loyal to the Democratic Party. According to this theory, the Democrats knew they would lose the 1972 election, so they engineered the break-in to look like a Republican operation, thus sowing the seeds for President Nixon's eventual downfall.

Riconosciuto in Washington, Mr. Casolaro wrote a letter to the New York City agent. He enclosed another treatment, this time entitled "Update on the Pursuit of the Tape and the Jailing of Danger Man." In this treatment, Mr. Casolaro described his trip to Washington state and how he had spent hours unsuccessfully searching for a tape that Mr. Riconosciuto claimed contained threats by Mr. Videnieks directed at him. In his cover letter, Mr. Casolaro wrote:

> I must explain how much deeper in debt I am. Every month that goes by without income puts another $4,500 or so on my liability just keeping my family and self alive. On top of that, my mortgage which is now up to $300,000 is scheduled for final payment in September 1991.

On May 31, 1991, Ms. Mackey called Ms. Ray and told her that she had decided not to represent Mr. Casolaro. Ms. Ray notified the New York City agent of Ms. Mackey's decision. Several days later, Ms. Mackey telephoned Ms. Ray to see whether Ms. Ray could ask Mr. Casolaro's New York City agent to "keep Casolaro from calling her and pleading his case for representation now that she has turned him down." On June 6, 1991, Ms. Mackey wrote a letter to Mr. Casolaro, informing him that her agency would not represent him. Mr. Casolaro contacted Ms. Mackey again in July, and on July 31, 1991, Ms. Mackey sent another letter rejecting him yet again.

In addition to the efforts to find a publisher through Ms. Ray and Ms. Mackey, Mr. Casolaro and his New York City agent also contacted Time Warner and its subsidiary, Little, Brown & Co. On December 17, 1990, Mr. Casolaro, his agent and Dr. Petrillo met

with Kelso Sutton of Time Warner and Roger Donald of Little, Brown. Mr. Donald looked at Mr. Casolaro's materials, and rejected it. However, he suggested that Time Warner's magazine division might be interested, but that Mr. Casolaro would have to work with a Time Magazine staff writer to develop the story. Mr. Casolaro refused. He said that he wanted to do the project as a book, and he wanted to do it by himself.

Mr. Casolaro called Mr. Donald again approximately three weeks before his death and asked him to review some "new material." Mr. Casolaro faxed the material to Mr. Donald, who reviewed it. Mr. Casolaro contacted Mr. Donald again several days before his death, and Mr. Donald again told him that Time Warner and Little, Brown were not interested in publishing Mr. Casolaro's "Octopus" project or in paying him an advance.

On July 22, 1991, Mr. Casolaro faxed to his New York City agent his final treatment. The three and one-half page treatment is entitled "The Octopus." He attached to the treatment a two page list of 51 individuals and groups comprising a "Cast of Characters." The treatment surveys various scandals and other international events of the late 20th century. In the cover letter, Mr. Casolaro wrote:

> I have purposefully left out some names in the CAST OF CHARACTERS for two separate reasons. I will tell you those names and the reasons when we talk.
>
> This is my final week for these marathon hours over the last 12 months. Encountering this odyssey, meeting it with my whole life, is to grapple with something personal since I've risked everything. By Friday, I have to come up with about $5000 just to cover my mortgage payment and my real estate taxes and in

> September I'll be looking into the face of an oncoming train. Father, what will I do?
>
> Still, I feel the happiness that an eskimo must feel when he comes across fresh bear tracks when he's ahead of all the other sledges. It's just the way it has happened.

It appears that Mr. Casolaro never had any chance of finding a publisher for his work. Mr. Donald, for example, told the Martinsburg police, when they contacted him after Mr. Casolaro's death, that Mr. Casolaro's work was "amateur" and that it reflected simply a rehash of material commonly available in newspaper and magazine articles. Ms. Ray and Ms. Mackey likewise were unimpressed with his work.[47]

Dr. Tony Casolaro told us that his brother would never have committed suicide over money. He explained that their family was very close and his brother always knew that he could turn to his family for financial resources.

The Onset of Multiple Sclerosis

As discussed above, the autopsy revealed that Mr. Casolaro had been suffering from multiple sclerosis at the time of his death. We are unaware of any direct evidence that the disease was diagnosed before his death. Our investigation found that the last time he had been to a doctor was 18 months before his death

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[47] Mr. Casolaro's frustration in finding a publisher for his Octopus story was the last in a series of financial setbacks. Mr. Casolaro had enjoyed great professional success with a computer newsletter he owned called Computer Age. However, he was forced to sell the publication in 1990 after he began to experience some financial difficulties. Though he thought he would continue to work for the new owner, he was fired following the sale.

when he needed emergency treatment after accidentally dropping a barbell on his head.

However, there are some indications that the disease was beginning to affect his life and that he was concerned that he had some sort of illness. For example, during June and July 1991, some of Mr. Casolaro's friends noticed that he seemed to be having certain physical problems. Ann Klenk noted that Mr. Casolaro experienced some sort of motor difficulty with his right hand and had trouble opening a window in her house. On another occasion Mr. Casolaro, who was in apparently good physical shape, had trouble finishing a friendly volleyball game. On another occasion, he was too exhausted to help his friend Bill Webster paint his house. Mr. Casolaro also complained on separate occasions to both Wendy Weaver and Ann Klenk about vision trouble. He began borrowing Wendy Weaver's eyeglasses for reading and reduced his night driving. Ms. Weaver observed that Mr. Casolaro also seemed to have weakness in his limbs, and that he could not perform various simple tasks around the house.

Also, several weeks before his death, he confided to his friend Ann Klenk that he was "having trouble thinking." According to Ms. Klenk, he said that "if I ever couldn't think I'd kill myself."

Finally, Mr. Casolaro approached Anne Weinfield, a long-time friend and nurse, several months before he died and asked her about "research" he was doing about "slow acting viruses," including multiple sclerosis. Ms. Weinfield recalls that he

specifically asked her about the symptoms and consequences of multiple sclerosis.

Other Indications

There were some other indications that are, at the very least, consistent with a state of mind contemplating suicide. For example, several days before his death, Mr. Casolaro showed Zoe Gabrielle Milroy, a friend, a letter that he had written to his son in which he imparted what Ms. Milroy described as "heavy" fatherly advice. Ms. Milroy told us that she immediately asked Mr. Casolaro if the letter was actually a suicide note. She said he changed the subject.

Four days before his death, Mr. Casolaro's neighbor, Olga Mokros, came to his house. She worked as a housekeeper for Mr. Casolaro. Ms. Mokros helped Mr. Casolaro pack a suitcase as he told her he was going on a trip. She asked if she should prepare the house for his son, who was expected on a visit from Colorado in two weeks. According to Ms. Mokros, Mr. Casolaro told her that he "would not see [his son]" anymore. He then took her into his basement office and showed her where he kept his will.

There were other indications of strange and perhaps suicidal behavior as well. For example, in approximately May 1991, Mr. Casolaro was housesitting for his friend Bill Webster. According to Ms. Klenk, Mr. Casolaro called her at 5:00 a.m. one morning and told her he had hurt himself. He said he had "spent the night on the roof" of the house and that he had fallen off and hurt his leg. Several days later, however, Mr. Webster called

Ms. Klenk and told her he had found a broken ceramic object and some bloody towels in his basement. During the autopsy, Dr. Frost found a healed scar on the inside of Mr. Casolaro's right leg near the femoral canal and vein.

Ms. Klenk also told us that, in approximately October 1990, Mr. Casolaro had a mysterious auto accident in which his car went off the side of the highway. Mr. Casolaro told Ms. Klenk and Wendy Weaver that he thought he had been forced off the road, but he did not want to report the incident to the police or to seek medical treatment. We were unable to learn enough about this incident to determine whether it was a legitimate accident, a staged suicide attempt or a homicide attempt.

Some of his friends also noticed that he had become "obsessed" and "all consumed" with the "Octopus" story by early 1991. Two of Mr. Casolaro's closest friends, Wendy Weaver and Ann Klenk, both report that he was completely immersed in the story. They both told us that Mr. Casolaro slept and ate very little during the final months of his life. Jim Pittaway, who had known Mr. Casolaro for several years, told us that beginning in February, 1991 Mr. Casolaro slipped into a "fantasy land" of conspiracy and intrigue. Other friends say that Mr. Casolaro was "losing his grip" on reality.

Dr. Petrillo and Ann Klenk both told us that Mr. Casolaro was absorbing huge amounts of information, so much that he was having trouble organizing it in his mind. Mr. Casolaro told Ms. Klenk that he was becoming frustrated at his inability to

organize his thoughts and reduce his ideas to writing. Wendy Weaver and Ann Klenk report that he was "disappointed" and "hurt" at his failure to secure a publisher or obtain an advance. Ann Klenk, herself a professional journalist, suggested to Mr. Casolaro that he try to break the project into smaller, more manageable bits and to try publishing it piecemeal, perhaps as a series of newspaper or magazine articles rather than as a book.

Not all of Mr. Casolaro's friends, however, considered him to have been depressed or emotionally upset. Ben Mason and Wendy Weaver, for example, report that he appeared enthusiastic about the "Octopus" project and insist that he continued to be generally upbeat and happy.

Psychological Autopsy

Finally, at our request, the FBI's National Center for the Analysis of Violent Crime, located at the FBI Academy in Quantico, Virginia, conducted an equivocal death analysis, or "psychological autopsy," of Mr. Casolaro. Three FBI behavioral scientists prepared a report examining Mr. Casolaro's life history and his behavior during the final weeks and months of his life. They also reviewed the autopsy report. They concluded that Mr. Casolaro had committed suicide and that he may have intentionally "scripted" the end to his own life.

The behavioral scientists noted that the "one common denominator in the life of Mr. Casolaro up until 1990 appeared to be feelings of high expectations of success, followed by disappointments." They found that while Mr. Casolaro "wore the

facade of the eternal optimist . . . deep down inside he may have perceived himself as a failure as an author, an investigative reporter, a husband, a father and as a businessman." The behavioral scientists found his physical problems and possible concern about multiple sclerosis very significant, noting that "the thought of having a progressively debilitating disease may have been overwhelming."

Added to the other "stressors" in Mr. Casolaro's life, he may have believed that his situation was deteriorating and that "he was running out of time." The report noted that by "planting the seeds" in the minds of those close to him that he may have been killed, Mr. Casolaro thought he might be alleviating the guilt feelings his family and friends would feel for not preventing his suicide. In addition, Mr. Casolaro might have hoped that by making his death look mysterious, he might gain in death the journalistic fame he had never enjoyed in life, by "dying for a story," becoming "a martyr for truth and justice," only to have been "silenced on the eve of his greatest triumph by the forces of evil."[48]

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[48] Most forensic scientists regard the psychological autopsy tool as a valuable aid in understanding the mental state leading to an individual's decision to commit suicide. However, the courtroom evidentiary value of psychological autopsies has recently been criticized in a recent law review article. Ogloff and Otto, Psychological Autopsy: Clinical and Legal Perspectives, 37 St. Louis U.L.J. 607 (1993) (attacking reliability of psychological autopsies).

4. Allegations Concerning Mr. Casolaro's Death

There is no credible evidence that Mr. Casolaro's death was anything other than a suicide. Nor is there any evidence placing any other individual in Mr. Casolaro's hotel room on either the evening of August 9 or the morning of August 10, 1991. Furthermore, the evidence is wholly consistent with suicide. Nevertheless, several individuals have speculated that some sort of foul play was involved in Mr. Casolaro's death. In this section, we review those allegations.

Ethyl Alcohol Injection

INSLAW recently asserted that perhaps someone entered Mr. Casolaro's room and injected him above the spine with "ethyl alcohol absolute," thereby deadening his nerves. Dr. Cash, the West Virginia toxicologist, found no ethyl alcohol in Mr. Casolaro's blood. Moreover, Dr. Frost found no injection sites anywhere on his body. Pure ethyl alcohol would have been particularly irritating to the skin, but no such irritations were found during the autopsy.

We asked Dr. Yale Caplan, a Baltimore toxicologist and former President of the American Academy of Forensic Sciences, about the "ethyl alcohol absolute" theory. He agreed with Dr. Frost that it would have been impossible for Mr. Casolaro to have received such an injection without Dr. Frost seeing evidence of it during the autopsy. Dr. Caplan also noted that such an injection would have to have been precisely and expertly made, with Casolaro's cooperation, for it to have achieved a "nerve-

deadening" effect.

Involvement of Mr. Riconsciuto

On September 30, 1991, Robert Booth Nichols, one of Mr. Casolaro's primary sources, told Detective Sergeant Swartwood of the Martinsburg Police Department that he thought Mr. Casolaro had been murdered and that Michael Riconosciuto was probably involved in some way. He did not and has not provided any basis for those allegations other than his claims that Mr. Casolaro was investigating some dangerous individuals.

We are unaware of any evidence linking Mr. Riconosciuto to Mr. Casolaro's death. Further, Mr. Riconosciuto was in prison in Tacoma, Washington, awaiting trial on methamphetamine charges, on the day Mr. Casolaro's body was discovered.

Involvement of Robert Booth Nichols

Robert Booth Nichols, a self-styled "international businessman," was one of Mr. Casolaro's primary sources. Telephone records from the last few months of Mr. Casolaro's life indicate that the two men spoke regularly and at length during that time period.[49]

According to several of Mr. Casolaro's friends, he spoke often of Mr. Booth Nichols and described him as a mysterious figure with connections to Japanese organized crime, the

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[49] Mr. Booth Nichols and Mr. Casolaro also met at least once during the early summer of 1991. The two men had dinner at a restaurant in Virginia. The following day, Mr. Casolaro introduced him to his friend Wendy Weaver. Contrary to some published reports, Ms. Weaver told us that Mr. Booth Nichols did not punch, grab or beat up anyone in a bar while she was with him and that he did not boast of connections with organized crime.

intelligence community and international arms dealers. Mr. Casolaro told several friends that he had heard from other sources that Mr. Booth Nichols was dangerous and that he had been involved in several murders.

An article in the January 1993 issue of Spy magazine suggests that Mr. Booth Nichols may have had Mr. Casolaro killed because he feared Mr. Casolaro was about to expose him as someone who had years earlier offered to become an FBI informant against the mafia. We found no evidence that he had anything to do with Mr. Casolaro's death. Furthermore, he was in London on the day that Mr. Casolaro died.[50]

Involvement of Peter Videnieks

Mr. Riconosciuto and others have suggested that Peter Videnieks, the Department of Justice contracting officer on the PROMIS contract, was also somehow involved in Mr. Casolaro's death. There is no evidence whatsoever of Mr. Videnieks' involvement. The allegations appear to rest on the fact that Mr. Videnieks' wife works for Senator Robert Byrd of West Virginia,

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[50] Though Mr. Booth Nichols conveyed an image of intrigue to Mr. Casolaro, it is clear that at least some of that image was exaggerated. For example, in a lawsuit against the Los Angeles Police Department, he testified that he had been a member of the United States intelligence community for many years. (Booth Nichols v. City of Los Angeles, No. NCC 31322B, Trial Transcript, Mar. 11, 1993, 32 et seq.) No evidence supports that claim. In fact, the CIA informed us that it does not have, nor has it ever had, any employment relationship, contractual relationship or any other association with Mr. Booth Nichols. Mr. Booth Nichols also testified that he had once "been instructed" to make a bid to purchase the assets of the Summa Corporation in the late 1970s, following Howard Hughes' death. (Id. 141-51). The documents connected to that incident, however, reflect that Summa summarily rejected Booth Nichols' overtures.

the state in which Mr. Casolaro's death occurred, and that Mr. Videnieks was a friend of Joseph Cuellar.

In addition, Charles Hayes, the Kentucky salvage dealer, told Martinsburg police that Peter Videnieks and Dr. Earl Brian had gone to the Sheraton Inn in Martinsburg around the time of Mr. Casolaro's death to play in a "high-stakes poker game, requiring $10,000 minimum to sit at the table." The police found it difficult to believe that gaming of that magnitude could have been going on in Martinsburg without their knowledge. Nevertheless, they investigated this lead but were unable to corroborate it. As discussed above, we believe Mr. Hayes lacks credibility.

During an interview with us, Mr. Videnieks denied having any involvement in Mr. Casolaro's death and claimed that he was with his wife at their summer cottage in Treadwell, New York, from August 5 to August 11, 1991. His personnel records reflect that he was on leave during this time period, and a credit card receipt shows that he made a purchase at a bookstore in Oneonta, New York on August 9, 1991. His telephone records indicate that a call was placed to his brother from the Treadwell cottage on August 9, 1991 at 8:35 p.m.

We have no reason to question Mr. Videnieks' claim that he was in New York on August 10, 1991 and are unaware of any evidence linking Mr. Videnieks to Mr. Casolaro's death.

Involvement of Joseph Cuellar

Army Reserve Major Joseph Cuellar also was in contact with

Mr. Casolaro during the last few months of his life. Mr. Casolaro apparently met Mr. Cuellar by chance one afternoon in May 1991 at "The Sign of the Whale" bar in Arlington, Virginia. Mr. Cuellar had gone to the bar expecting to meet some friends who were going to celebrate his return from Operation Desert Storm. Mr. Casolaro, who was already seated at the bar waiting for his friend Lynn Knowles when Mr. Cuellar arrived, struck up a conversation with Mr. Cuellar. Mr. Cuellar talked of his exploits in the Army special forces, and, according to Mr. Cueller, Mr. Casolaro became fascinated. After Ms. Knowles arrived, she listened as the two men discussed various military issues. When Mr. Cuellar's friends arrived, they made arrangements to meet again.

The two men talked on the phone several times after they first met. They also saw each other at least two additional times. In addition, Mr. Cuellar started dating Ms. Knowles.

During one of their conversations, Mr. Casolaro apparently asked about various individuals involved in his "Octopus" story. Mr. Cuellar told him he knew Peter Videnieks. According to Mr. Cuellar, he explained that he knew Mr. Videnieks because his former fiance had worked with Mr. Videnieks' wife in the Capitol Hill office of West Virginia Senator Robert Byrd. Both Mr. Cuellar and Mr. Videnieks told us that their relationship was social, that they had double-dated with their significant others a number of times, and that they saw less of each other after Mr. Cuellar broke up with his fiance.

Once he learned of Mr. Cuellar's relationship with Mr. Videnieks, Mr. Casolaro asked Mr. Cuellar repeatedly to arrange a meeting with Mr. Videnieks. Mr. Casolaro wanted to interview Mr. Videnieks about the allegations made by Mr. Riconosciuto in his March 1991 affidavit that Mr. Videnieks had threatened him. Mr. Cueller called Mr. Videnieks to try to arrange a meeting, but Mr. Videnieks refused.[51]

After Mr. Casolaro died, Mr. Cuellar stopped dating Ms. Knowles. She told us that at one point, as their relationship was deteriorating, he made a veiled threat to her, stating that she was asking too many questions about Mr. Casolaro, that she had two children, and that she would not be doing them a favor if she were to wind up like Mr. Casolaro or another journalist who had been killed in Guatemala. Mr. Cuellar denied making those statements to her.

Several people have suggested that Mr. Cuellar was somehow involved in Mr. Casolaro's death. We found no evidence supporting that hypothesis. On the day Mr. Casolaro died, August 10, 1991, Cuellar was in Washington, D.C., working on his "outprocessing" from Desert Storm, and his "in-processing" into the Southern Command. Several witnesses have verified that he was in Washington on August 10, 1991.

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[51] According to Mr. Cuellar, Mr. Casolaro confided in him near the end of his life, expressing frustration that he had become so wrapped up in the "Octopus" story that he had lost his perspective and was unable to arrange the material into a cohesive story. Mr. Casolaro also told him that he was in financial distress and that he was close to losing his house.

Threats Directed at Mr. Casolaro

During the last few weeks of his life, Mr. Casolaro told several of his friends that he had been receiving death threats over the telephone. In addition, Mr. Casolaro's neighbor, Olga Mokros, told us that she was in Mr. Casolaro's house on the Monday before he died, that she answered the phone, and that the caller uttered a death threat. She could not recall any other specific occasions on which Mr. Casolaro received such a call, even though she was at his house nearly every day. Mr. Casolaro also told several people that the story he was working on was "dangerous" and that he had sent his younger brother John away from the house because of the danger. According to Dr. Tony Casolaro, his brother once told him, "If I die, don't believe it was an accident."

However, several of Mr. Casolaro's closest friends told us they now believe, with the benefit of hindsight, that he invented at least some of the threatening phone calls and the other "dangers" involved in his work so that people would believe, after he committed suicide, that he might have been murdered. Jim Pittaway told us that he thinks Mr. Casolaro committed suicide and that he "shrouded his death in mystery" so that his conspiracy theories would outlive him. He told us that when he suggested to Mr. Casolaro that he contact the phone company after he had allegedly received threatening calls, Mr. Casolaro quickly changed the subject. Lillian Pittaway, Jim Pittaway's wife, described Mr. Casolaro as self-destructive. Zoe Gabrielle

Milroy, a close friend of Mr. Casolaro's for fourteen years, believes that he "perpetrated this conspiracy theory" to make his death seem mysterious and to ease the pain his family would suffer from an outright suicide.[52] Pete Kennedy, a guitarist and friend, shares Ms. Milroy's view that Mr. Casolaro wanted everyone to think he was in danger so that his death would appear mysterious. Ms. Milroy also discounts the views of those who say Mr. Casolaro was not depressed, noting that he was a "consummate actor" who could be "laughing on the outside, but very hurting on the inside."

"Village Voice" Phone Call

On Sunday night, August 11, 1991, the day before news of Casolaro's death became public, a writer at the Village Voice in New York City named Dan Bishoff received a telephone call. Mr. Bishoff later told the Martinsburg police that he was in his office that evening when the phone rang on a direct dial line. The caller told him, "There has been a death of a journalist in West Virginia that needs to be looked into." Mr. Bishoff told the police that the caller may have mentioned the name "Casserole."

We spoke with Mr. Bishoff. Although he continues to assert that he received a telephone call on August 11, he said that, upon reflection, he is not sure whether the caller mentioned the

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[52] Sadly, Mr. Casolaro was not the first person to commit suicide in his family. In 1971, his younger sister took her own life by overdosing on drugs. She was 18 years old and living in the Haight-Ashbury district of San Francisco at the time.

name "Casserole" or anything else approximating Casolaro. He told us that many "conspiracy buffs" had his inside telephone line, and he frequently received calls about dead journalists. He indicated that at the time he spoke with the Martinsburg police, he "wanted it to be true" that Mr. Casolaro had been murdered, but that now he believes he committed suicide. He told us that he now regards the Sunday night telephone call as "not significant."

Casolaro's Fear of Needles and Blood

Some of Mr. Casolaro's family and friends suggest that he would not have committed suicide by cutting his wrists because he was frightened of needles and the sight of blood. We spoke with several doctors and dentists who treated Mr. Casolaro during the years before his death. Dr. Tony Casolaro's medical partner, Dr. Steven Zimmet, told us that during a routine physical examination approximately two years before Casolaro died, Casolaro put up a fuss before submitting to a blood test. However, Dr. Stanley Levin, who performed a root canal on Casolaro in December 1990, told us that Mr. Casolaro exhibited no fear of needles, blood, pain, or any of the other incidents of oral surgery.

Casolaro's Planned Meeting In West Virginia

Mr. Casolaro told many of his friends and family that he was going to West Virginia to meet a "source." No one with whom we spoke recalls Mr. Casolaro ever identifying who it was he supposedly planned to meet. Mr. Casolaro himself gave varying descriptions of the "source," telling the Weinfields that he did

not know the identity of the person he was going to meet; telling Lillian Pittaway that he was going to meet someone who would give him his "biggest tip;" and telling Ben Mason that he was going to see "the guys."

As discussed in some detail above, we were able to account for most of Mr. Casolaro's time in West Virginia. We were unable to find any conclusive evidence that he met with anyone while in Martinsburg other than his chance meetings with various individuals at bars and restaurants. However, as noted above, a waitress at the Sheraton's Heatherfield Lounge said she saw Mr. Casolaro meeting with either an "Iranian or Arabian" individual on Thursday, August 8. Also, William Turner claims to have met with Mr. Casolaro on the afternoon of August 9.

For the reasons indicated above, we are not convinced that either of these meetings took place. However, regardless whether these meetings took place, there is no evidence linking any of the alleged participants in the meetings to Mr. Casolaro's death.

The Paper in Casolaro's Shoe

During forensic testing, the West Virginia State Police Crime Laboratory found a folded piece of paper inside Mr. Casolaro's left shoe. The shoe had been found in room 517, next to the bed. The paper had indentations, as if someone had written something on a page on top of the paper. The laboratory determined that the paper had come from the same legal pad on which Mr. Casolaro had written the suicide note. The laboratory was able to reproduce the impressions left on the paper. The

writing was Mr. Casolaro's; and the paper read as follows:

Outline

Chapter on 1980.
Terrorist underground. Afghanistan. Mideast. Iran.
John Philip Nichols after arrival
Indian Reservation
Fred Alvarez
Paul Morasca
Philip Arthur Dempson
Fresno
Hercules -- Bill Kilpatrick The Big Tex -- Ricono
San Francisco
Finish up chapter w/ Paul M. & Fred A. / ord

There is no indication when Casolaro had written those words, or why he had put the piece of paper inside his shoe.

Lack of Documents

Several of Mr. Casolaro's friends and family members told us that Mr. Casolaro typically carried a significant number of notes and documents with him. The fact that no documents were found in Mr. Casolaro's hotel room following his death, they suggest, may indicate that he was killed and his notes taken.

There is no credible evidence that Mr. Casolaro ever had any documents with him while he was in Martinsburg. All the hotel employees, including the maids that cleaned his room, told the police that they never saw any documents either in Mr. Casolaro's room or in his immediate possession. Nor was he seen with any documents at any other location in Martinsburg. In short, there is no credible evidence that there were ever any documents reflecting his investigation in his hotel room.

Mr. Lopez, the desk clerk, said he may have seen Mr. Casolaro with a briefcase but he is not sure. In light of his

lack of certainty and the fact that none of the other hotel employees recall seeing a briefcase or documents, we believe that Mr. Lopez was probably mistaken.[53]

F. Conclusion

The overwhelming physical evidence points to the conclusion that Mr. Casolaro committed suicide: the crime scene, the autopsy, the blood spatter report and the toxicology report as well as the other aspects of the investigation undertaken by the Martinsburg police and us. Furthermore, there were indications during the last few months of Mr. Casolaro's life that he was despondent and exhausted. Although there were mistakes made during the original investigation into the death (most particularly the failure to seal the room and the early embalming of the body), we have no reason to believe that the original investigations were not thorough or undertaken in anything other than the utmost good faith. Based on our review of all the evidence, we concur with the conclusion reached by Martinsburg police authorities that Mr. Casolaro took his own life.

We reached that conclusion after carefully considering the questions and concerns raised by his family and friends as well as by others. After reviewing them, we believe that many of those questions are typical of the types of questions that follow any suicide. As for the allegations of foul play raised by some

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[53] William Turner claims to have given Mr. Casolaro some documents on Friday, August 9, 1991. As discussed above, we find his story to be wholly unreliable.

individuals, there is simply no evidence supporting the involvement of any of the individuals identified in Mr. Casolaro's death.

VI. The Attorney General Should Not Appoint an Independent Prosecutor to Further Investigate INSLAW's Charges.

In its 1992 report, the House Judiciary Committee recommended that the Attorney General appoint an independent counsel to investigate, among other things, "INSLAW's allegations of a high level conspiracy within the Department to steal Enhanced PROMIS software to benefit friends and associates of former Attorney General Meese." (House Report 113.) Since that time, the independent counsel law has expired and has not yet been renewed. However, should the Independent Counsel Reauthorization Act of 1993 become law, we strongly recommend, based on all of the conclusions reflected in this report, that an independent counsel not be appointed to investigate any claims related to the INSLAW affair.

First, INSLAW's allegations have been fully and fairly investigated by a special counsel and have been found to be totally lacking in credibility. There is no reason to question the integrity or independence of Judge Bua or his investigation. To the contrary, Judge Bua's integrity is above reproach, and our review of his investigation confirmed the thoroughness and independence of his efforts in this endeavor. An independent prosecutor would simply duplicate that effort. Accordingly, the

appointment of an independent prosecutor would, in our opinion, constitute a waste of government funds and an unwise use of the talents and energies of whatever respected lawyer was so appointed.

Second, the Department of Justice has already conducted a review of the allegations made by INSLAW and determined that they were not sufficient to warrant the initiation of a preliminary investigation under the Independent Counsel statute. In February 1988, INSLAW submitted a series of allegations to the Public Integrity Section of the Department of Justice which it maintained justified the appointment of an independent counsel. Those allegations included, among others, the charges that former Attorney General Edwin Meese and Judge Jensen conspired to steal INSLAW's software; that the conspiracy was intended to benefit Hadron and Dr. Brian; that the Department interfered with INSLAW's legal representation by inducing Dickstein, Shapiro & Morin to ask INSLAW's attorney to withdraw from the firm; that the Department sought to seek a conversion of INSLAW's bankruptcy to a liquidation proceeding; and that the Department instigated or encouraged a hostile take-over bid of INSLAW by Systems and Computer Technology, Inc., in order to obstruct INSLAW's suit against the Department. In May 1988, the Department informed INSLAW that the allegations were insufficient to warrant a preliminary investigation under 28 U.S.C. § 591 and that the matter was accordingly closed. The determination was made after careful consideration by the Department of the credibility of the

source of the allegations and the specificity of those allegations as required by the Independent Counsel statute. [54]

Third, there are no "covered" officials for whom the appointment of an independent counsel would be appropriate at this time. Both the Independent Counsel statute that expired in 1992 and the proposed reauthorization currently in the House of Representatives limits the applicability of the law to three years after the covered government official leaves office. The Senate version of the legislation would reduce post-employment coverage to one year. All the potential targets of such an investigation have been out of office for more than three years. Accordingly, there are no covered officials that would require triggering the provisions of the Independent Counsel law.

And fourth, the discretionary appointment of an independent counsel for officials not considered to be "covered" officials requires a determination that an investigation of such an official by the Department would result in a "personal, financial or political" conflict of interest. There is no indication that such a conflict exists or would exist if the Department were to bring charges against any of the individuals identified by INSLAW as allegedly being involved in a conspiracy to hurt INSLAW.

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[54] INSLAW subsequently submitted a request to the Division for the Purpose of Appointing Independent Counsels of the U.S. Court of Appeals for the District of Columbia Circuit to appoint an independent counsel. The request was rejected on jurisdictional grounds. In re INSLAW, Inc., 885 F. 2d 880 (D.C. Cir. 1989). INSLAW's petition for a writ of mandamus directing the Attorney General to conduct a criminal investigation based on INSLAW's various allegations also was rejected by the courts. INSLAW, Inc. v. Thornburgh, 753 F. Supp. 1 (D.D.C. 1990).

VII. The Department of Justice Should Not Authorize The Payment Of Any Additional Compensation To INSLAW.

At the heart of the controversy between INSLAW and the Department of Justice is a dispute over money. The basic dispute centers on (1) whether INSLAW has any proprietary rights in the PROMIS software that it used to perform its obligations under its 1982 contract with the Justice Department, and (2) if so, whether INSLAW is entitled to compensation greater than that called for by the contract. INSLAW asserts that the answer to both of those inquiries is yes and that it is, therefore, entitled to the $6.8 million awarded it by the Bankruptcy Court and hundreds of millions of dollars more for consequential damages. The Department of Justice has maintained throughout the course of its dealings with INSLAW that INSLAW has failed to demonstrate the existence of any proprietary enhancements in its software and that, even if INSLAW did use software containing proprietary enhancements to satisfy its contractual obligations to the government, it is not entitled to any compensation beyond that provided for in the contract.

It should be noted from the outset that we considered this issue one of the most difficult ones before us. There is no dispute that, in the 12 years since the PROMIS contract was executed, INSLAW has failed to obtain any kind of enforceable judgment on any of its claims. INSLAW's failure in prosecuting its claims comes despite extensive litigation over the years. However, there is also no dispute that the Bankruptcy Court did

award INSLAW $6.8 million in damages based on the court's conclusion that the Department had violated the automatic stay provisions of the bankruptcy laws. In re Inslaw, 113 B.R. at 815-819. Although that decision was overturned by the U.S. Court of Appeals for the D.C. Circuit on the ground that the Department's actions did not constitute a violation of the automatic stay, 932 F.2d at 1475, we were troubled by the factual findings of the Bankruptcy Court.

After carefully reviewing all the relevant facts and the various judicial opinions that have been issued in relation to this dispute, we conclude that the Department of Justice should not authorize the payment of any moneys to INSLAW or its principals. There is no credible evidence that any Department of Justice official in any way hindered INSLAW's ability to litigate its claims against the Department. Moreover, we believe it is clear that any claims INSLAW may have once had against the government are now barred by the applicable statutes of limitations. After reviewing all the issues raised by INSLAW, we find that there is no basis warranting the waiver by the United States of the statutory time bars to INSLAW's claims. Furthermore, and most importantly, we do not believe that, even if INSLAW's claims were timely, it would be entitled to any additional compensation.

A. The History of INSLAW's Monetary Claims.

Under the Contract Disputes Act, 41 U.S.C. § 601 et seq.,

all claims arising under a government contract must be submitted to the appropriate government contract officer for resolution. The contract officer's decision becomes final and conclusive unless review is sought before the appropriate Board of Contract Appeals within 90 days or before the U.S. Court of Federal Claims within one year. Appeals from either the Board of Contract Appeals or the Claims Court lie solely with the U.S. Court of Appeals for the Federal Circuit. These procedures provide the exclusive jurisdiction for litigating claims against the United States arising under a contract governed by the Contract Disputes Act.

There are two groups of claims that INSLAW still maintains entitle it to additional compensation. The first involves a series of miscellaneous contractual claims ("DOTBCA Claims"). On August 8, 1984, INSLAW submitted a letter to Peter Videnieks, the Department's contracting officer, asserting claims for computer center costs ($160,583) and target fees ($331,447). Mr. Videnieks denied those claims on November 20, 1984, and INSLAW filed a timely notice of appeal with the Department of Transportation Board of Contract Appeals ("DOTBCA") in February, 1985.[55]

On October 17, 1985, INSLAW submitted additional claims totalling $4.1 million to Mr. Videnieks. These claims included a $2.9 million claim for licensing fees allegedly due as a result

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[55] The DOTBCA has jurisdiction over government contract claims against the Department of Justice.

of the Department's use of INSLAW's proprietary enhancements ("Data Rights Claim") and $1.2 million more in miscellaneous claims. The contracting officer denied these claims in rulings issued on February 21 and September 4, 1986. INSLAW appealed these rulings, with one exception, to the DOTBCA. In its May 1986 notice of appeal of the February 21 ruling, INSLAW made clear that it was "not appealing to this Board that portion of the [Contracting Officer's] Final Decision on Data Rights." All of the other October 1985 claims were appealed to the DOTBCA.

INSLAW failed to pursue vigorously the claims that it had appealed to the DOTBCA. In October 1992, the DOTBCA, noting that "it is clear that INSLAW is most anxious to avoid trial of the issues," concluded that the "principal reason that, after all these years, trial has not commenced, has been INSLAW's repeated requests for suspension and continuance, including a Bankruptcy Court suspension of Board proceedings at INSLAW's behest." Later that same month, eight years after asserting its initial claims, INSLAW submitted a motion to the DOTBCA seeking to withdraw all of its claims, asserting that it could no longer afford legal counsel to pursue the case. In an order dated November 9, 1992, the DOTBCA granted INSLAW's motion and dismissed the claims: "The requested dismissal in effect results in a determination that no amounts are owing to INSLAW under its claims...The appeals before the Board are hereby dismissed with prejudice." Appeal of INSLAW, Inc., Docket Nos. 1609, 1673, 1775, 1828, Opinion by

Administrative Judge Robertory (DOTBCA Nov. 9, 1992).[56]

Rather than pursuing an appeal to the DOTBCA on its Data Rights Claims, INSLAW decided to pursue those claims as part of its bankruptcy proceedings. In a novel and ultimately unsuccessful litigation strategy, INSLAW filed an adversary proceeding before the Bankruptcy Court alleging the Department of Justice was willfully violating the automatic stay by its continuing use of Enhanced PROMIS. In essence, INSLAW repackaged its Data Rights Claims in the vernacular of a bankruptcy proceeding. In 1988, Bankruptcy Judge Bason issued his opinion in which he concluded, among other things, that (1) INSLAW's claims were not based on contract and therefore were not foreclosed by the exclusive jurisdiction of the Contract Disputes Act, and (2) INSLAW had established a violation of the automatic stay provisions of the Bankruptcy Act. United States v. Inslaw, Inc., 83 B.R. 89 (Bankr. D.D.C. 1988), rev'd, 932 F.2d 1467 (D.C. Cir. 1991), cert. denied, 112 S.Ct. 913 (1992). Judge Bason found that the Justice Department had acquired Enhanced PROMIS by "fraud, trickery, and deceit." He awarded INSLAW $6.8 million in damages for violations of the automatic stay.

Although Judge Bason's decision was affirmed by the District Court, the U.S. Court of Appeals for the D.C. Circuit reversed the decision on the grounds that the Department's actions had not

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[56] The Department of Justice had filed a number of counterclaims against INSLAW before the DOTBCA. Those claims were also dismissed by the DOTBCA in light of its determination that the Department's claims were setoffs and did not seek affirmative recoveries.

violated the automatic stay and, therefore, the Bankruptcy Court had no jurisdiction over INSLAW's Data Rights Claims. The Court of Appeals directed the Bankruptcy Court to vacate all of its orders concerning the Department's alleged violations of the automatic stay and to dismiss INSLAW's complaint against the Department. 932 F.2d at 1475. INSLAW's petition for a writ of certiorari was denied. 112 S.Ct. at 913.

B. INSLAW Is Barred From Asserting Any Additional Claims Against The United States.

There are currently no claims pending before any judicial tribunal between the United States and INSLAW. Furthermore, we are convinced that INSLAW would be barred by the applicable statutes of limitation from attempting to pursue any monetary claims against the United States.

All of the DOTBCA Claims were dismissed with prejudice by the DOTBCA on November 9, 1992, pursuant to INSLAW's own motion to dismiss. Under § 8(g) of the Contract Disputes Act, the Board's decision "shall be final" unless the contractor files an appeal with the U.S. Court of Appeals for the Federal Circuit within 120 days of the Board's decision. 41 U.S.C. § 607(g). INSLAW did not do so, thus rendering the DOTBCA's decision final.

INSLAW's Data Rights Claims are also time barred. The contracting officer issued a decision with regard to those claims on February 26, 1986. INSLAW never appealed that decision to an appropriate forum, i.e., either the DOTBCA or the Court of Federal Claims. In fact, in its notice of appeal to the DOTBCA,

INSLAW specifically excluded its Data Rights Claims from its appeal. Instead, INSLAW and its counsel decided to pursue that claim using a novel theory in the bankruptcy court. As was ultimately determined, the bankruptcy court did not have jurisdiction to hear those claims. Any further pursuit of those claims would appear to be foreclosed by § 6(b) of the Contract Disputes Act, which provides: "The contracting officer's decision on a claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter." Accordingly, the contracting officer's 1986 decision rejecting INSLAW's Data Rights Claims is final.

In a meeting with us and in various other forums, INSLAW has asserted that its claims for the allegedly wrongful use by the Department of Justice of its proprietary enhancements (i.e., its Data Rights Claims) are not governed by the Contract Disputes Act as they do not arise from the PROMIS contract. INSLAW contends that these claims are better understood as grounded in the tort of conversion. We do not think the recharacterization of its claims as arising in tort will enable INSLAW to circumvent the applicable statute of limitations. First, the Contract Disputes Act applies to all claims that are essentially contractual in nature even if they are styled differently. Our analysis of the controlling case law leads us to conclude that INSLAW's claims are "essentially contractual." See, e.g., Spectrum Leasing Corp. v. United States, 764 F.2d 891 (D.C. Cir. 1985). In fact, it is

worth noting that when INSLAW first asserted these Data Rights Claims to the contracting officer in 1985 they were presented as "arising under the above-referenced [PROMIS] contract" and the amount claimed was certified by Mr. Hamilton as a "contract adjustment."

Second, even in the unlikely case that the Contract Disputes Act is not controlling, any claims that INSLAW would have under the Federal Tort Claims Act would almost certainly be barred by the FTCA's two-year statute of limitations. 28 U.S.C. § 2401.

C. The Circumstances Surrounding INSLAW's Allegations Do Not Warrant The Waiver By The United States Of The Statutory Time Bars To INSLAW's Monetary Claims.

One of the principal missions of the Department of Justice is to ensure that individuals are treated fairly and justly in their dealings with the United States government. Accordingly, the determination that any claims INSLAW may have against the United States are barred by the applicable statutes of limitation does not end our inquiry. We believe that in those exceptional cases where not to do so would result in the commission of a manifest injustice, the United States should be willing to provide compensation to individuals even if the government is protected by applicable time limitations. This is not one of those situations.

First, INSLAW has had ample opportunity to fully litigate its claims in the courts of this country. Over the years, INSLAW has been represented by some of the finest attorneys and law firms in the country who have vigorously and zealously

represented INSLAW's interests. According to a document filed by INSLAW with the DOTBCA in 1992, INSLAW had incurred over $6 million in legal fees by that time. We are aware that INSLAW and its counsel made strategic litigating decisions that they may want to take back today: they decided to let INSLAW's claims before the DOTBCA languish for eight years, and they decided to pursue a novel, untried theory in Bankruptcy Court rather than to litigate the Data Rights Claims in the forum they knew was proper. As noted by DOTBCA Judge Robert J. Robertory, these were strategic decisions:

> Inslaw elected to pursue the issue of ownership in Promis in the Bankruptcy Court as a violation of the automatic stay imposed by 11 U.S.C. § 362, which eventually led to the Court of Appeals ruling (932 F.2d 1467, supra) that such claim could not be maintained on that basis. In so doing, Inslaw avoided the two tribunals (this Board and the United States Claims Court) which unquestionably had jurisdiction to determine the legal propriety of the Justice Department's use of Promis. The reason for this election was stated by one of Inslaw's counsel to be a fear that this Board would apply the rationale of Bell Helicopter Textron, ASBCA No. 21,192, 85-3 BCA ¶ 18,415 (1985), and hold that the Data Rights clauses of the contract gave title to the Promis enhancements to the Justice Department. In other words, Inslaw and its counsel were of the opinion that under the law of government contracts as expressed in Bell Helicopter Textron, under the provable facts of this case the Justice Department had sufficient ownership interest in Promis to permit the uses which the Justice Department made of it, without liability to Inslaw. This indicates that Inslaw and its counsel were of the opinion that Inslaw's position in the linchpin portion of the parties' dispute, title to the Promis software (an issue which Inslaw's appeal did not place before the Board), might be without foundation in law or fact.

The lack of success flowing from those decisions does not entitle INSLAW to relief from the statutes of limitation.

Furthermore, there is no credible evidence that any Department of Justice official did anything to hinder or frustrate INSLAW's access to the courts or its ability to present fully its claims. Had INSLAW been denied such access and the statute had subsequently run, we would have a very different situation.

Second, we concur with the Special Counsel's conclusion that "all of the actions taken by DOJ employees were done with a good faith belief that they were in the best legitimate interests of the government." (Bua Report 125.) The reason why this dispute did not come to a close following INSLAW's unsuccessful efforts in the courts and before the DOTBCA is that INSLAW has cloaked its contract dispute with the government with allegations of conspiracies, international intrigue and murder. By doing so, INSLAW has been able to attract and sustain media interest in what otherwise is nothing more than a government contracts dispute. In the process, INSLAW and its principals have repeated and broadcast unsubstantiated rumors apparently without any concern for the reputations of those referred to in those rumors. Individuals previously of stellar reputation and unquestioned integrity have had to live under clouds created by INSLAW. Those clouds have almost all been created based on nothing more than the alleged statements of "anonymous sources." As detailed throughout this and the Special Counsel's report, we have found virtually no credible evidence supporting INSLAW's conspiracy allegations. We believe INSLAW should not be rewarded for its

ability to keep its story alive by ruining the reputations of innocent individuals.

And third, after carefully reviewing the record, we do not believe INSLAW is entitled as a matter of law to additional compensation for the use of its PROMIS software. We have studied the opinions of the bankruptcy court, some relevant portions of the bankruptcy court record, the analysis of the Special Counsel and the views of INSLAW as reflected in its written submissions and in various meetings with its principals. Based on that review, we concur with the analysis and conclusions of the Special Counsel regarding the rights of the parties under the contract and the propriety of the government's conduct under the contract. (Bua Report 15-38, 124-140, 147-150, 250-255, 261-263.) Further, we believe the current use of INSLAW's PROMIS software by the Department in the Executive Office of United States Attorneys and in U.S. Attorneys' offices around the country is permitted under Modification 12 and other provisions of the contract.[57] Since we were unable to identify any credible evidence that the Department has distributed Enhanced PROMIS beyond those offices, we do not believe INSLAW is entitled to

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[57] Modification 12 provides:

> The Government shall limit and restrict the dissemination of the said PROMIS computer software to the Executive Office for United States Attorneys, and to the 94 United States Attorneys' Offices covered by the contract, and, under no circumstances shall the Government permit dissemination of such software beyond those designated offices pending the resolution of the issues extant between the Contractor and the Government under the terms and conditions of Contract No. JVUSA-82-C-0074.

additional compensation.

We are aware that these conclusions are at odds with some conclusions reached by Judge Bason after trial in his court. We cannot explain why Judge Bason reached such very different conclusions from those that we and the Special Counsel have reached.[58] However, after carefully reviewing Judge Bason's opinions, it is clear that the decisions rest in large part on Judge Bason's determinations as to the credibility of the witnesses who testified during trial. The following was Judge Bason's first finding regarding the credibility of the witnesses that appeared before him:

> The testimony of William Hamilton was accurate in all or almost all respects, even taking into account the natural human tendency to emphasize those things favorable to one's own cause. Mr. Hamilton was an impressive witness with an exceptionally good memory and an extraordinary ability to remember with precision details of events that occurred years ago.

In re Inslaw, 83 B.R. at 156. He went on to find that virtually none of the testimony given by Department of Justice employees or by others (including INSLAW employees) supporting the Department's position was credible. Id. at 156-158. The importance of those credibility determinations is apparent from a close reading of the decision as the testimony of Mr. Hamilton and a few other INSLAW officials appears to be the only support for the vast majority of Judge Bason's findings.

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[58] The House Committee Report reached the same conclusions as Judge Bason regarding the underlying contract dispute between INSLAW and the government. However, it appears that the report relies heavily on the findings of Judge Bason in reaching those conclusions.

We disagree with Judge Bason's credibility determinations. As detailed throughout the Special Counsel's report and this report, the information provided to us by Mr. Hamilton has often been unreliable and is always self-serving. Numerous witnesses have denied making statements attributed to them by Mr. Hamilton. Others have claimed that Mr. Hamilton badly mischaracterized their comments in order to make them fit into his conspiracy theories. These problems are not unique to our efforts. The House Committee report noted:

> Other witnesses directly contradicted the statements attributed to them by the Hamiltons and were clearly distressed that their names had been drawn into the web of the INSLAW conspiracy theory.

(House Report 50.) The Special Counsel concluded:

> We cannot fail to note also the degree to which William Hamilton's statements and assertions do not withstand scrutiny. We repeatedly encountered witnesses who, in a very credible way, denied making the statements attributed to them by Hamilton. The witnesses who contradicted Hamilton were both friend and foe of INSLAW, and we could not explain the constant contradictions as simply the efforts of Hamilton's enemies.

(Bua Report 266.) According to the DOTBCA, even INSLAW's counsel were concerned about Mr. Hamilton's credibility:

> The record contains statements by one of INSLAW's various attorneys indicating that Mr. Hamilton may be given to exaggeration. There was testimony in the Bankruptcy Court on December 7, 1988 by appellant's counsel that Mr. Hamilton's credibility was a real problem and would be a key issue in the case.

After spending a substantial period of time reviewing Mr. Hamilton's statements and allegations, we believe that he is not a credible source of information. Furthermore, he appears willing to repeat and publish any rumor or conjecture that he

hears without regard to the truth of those rumors or the effect his statements may have on the reputations of innocent individuals.